



# राजपत्र, हिमाचल प्रदेश

## हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

शिमला, मंगलवार, 18 मार्च, 2014 / 27 फाल्गुन, 1935

हिमाचल प्रदेश सरकार

हिमाचल प्रदेश विधान सभा सचिवालय

अधिसूचना

शिमला-4, दिनांक .....

संख्या: वि०स०/स्था०/सेवा०नि०/6-30/80.—अध्यक्ष महोदय, हिमाचल प्रदेश विधान सभा सहर्ष आदेश देते हैं कि श्रीमती वैशाली ठाकुर, मुख्य प्रतिवेदक दिनांक 31-08-2014 (अपराह्न) को सेवानिवृत्ति की आयु पूर्ण होने पर एफ.आर.-56 के उपबन्धों के अन्तर्गत सेवानिवृत्त होंगी।

सुन्दर सिंह वर्मा,  
सचिव,  
हि. प्र. विधान सभा।

## हिमाचल प्रदेश विधान सभा सचिवालय

अधिसूचना

शिमला-4, दिनांक .....

संख्या: वि०स०/स्था०/सेवा०नि०/6-30/80.— अध्यक्ष महोदय, हिमाचल प्रदेश विधान सभा सहर्ष आदेश देते हैं कि श्री चन्द्र प्रकाश नेगी, अनुभाग अधिकारी दिनांक 31-07-2014 (अपराह्न) को सेवानिवृत्ति की आयु पूर्ण होने पर एफ.आर.-56 के उपबन्धों के अन्तर्गत सेवानिवृत्त होंगे।

सुन्दर सिंह वर्मा,  
सचिव,  
हि. प्र. विधान सभा।

## LABOUR AND EMPLOYMENT DEPARTMENT

## NOTIFICATION

Shimla-2, 22<sup>nd</sup> March, 2014

**No. Sharm (A) 7-1/2005 (Awards) L-D/Shala.**—In exercise of the powers vested under section 17(1) of the Industrial Disputes Act, 1947, the Governor Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court D/Shala on the website of the Department of Labour & Employment of the Government of Himachal Pradesh.

Sr. No.	Case No.	Title of the Case	Date of Award
1.	40/2013	S/Shri Hans Raj V/s D.F.O. Salooni.	03-01-2014
2.	193/2013	Om Prakesh V/s E.E. HPPWD, J/Nagar.	08-01-2014
3.	206/2013	Ram Singh V/S -do-	08-01-2014
4.	199/2013	Hoshiyar Singh V/S -do-	08-01-2014
5.	208/2013	Ramesh Chand V/s -do-	08-01-2014
6.	200/2013	Dhmnu Ram V/s -do-	08-01-2014
7.	186/2013	Drumku Devi V/s -do-	08-01-2014
8.	205/2013	Besar Singh V/s -do-	08-01-2014
9.	191/2013	Meena Devi V/s -do-	08-01-2014
10.	196/2013	Labh Singh V/s -do-	08-01-2014
11.	07/2013	Jai Gopal V/s E.E. I&PH Kullu	08-01-2014
12.	136/2013	Vikas Singh V/s President, PTA G.H.	09-01-2014
13.	124/2013	Sant Ram V/s E.E. HPPWD, J/Nagar	09-01-2014
14.	325/2012	Nirmla Devi V/s -do-	09-01-2014
15.	126/2013	Pyaro Devi V/s -do-	09-01-2014
16.	123/2013	Dev Raj V/s -do-	09-01-2014
17.	123/2011	Bableet Kumar V/s M.D. Creast Steel & Power	10-01-2014
18.	182/2013	Sanjeev Kumar V/s E.O.M.C. Sh. Naina Devi.	14-01-2014

19.	138/2013	Ajeet Singh V/s D.F.O. Hamirpur.	14-01-2014
20.	01/2011	Rita Sharma V/S Chairman, Sushil Pundir	14-01-2014
21.	400/2009	Ravi Dutt V/s E.E. I&PH, Dalhousie	21-01-2014
22.	30/2013	Savitri Devi V/s E.E. HPPWD, Dharampur	22-01-2014
23.	29/2013	Soma Devi V/s -do-	22-01-2014
24.	31/2013	Neela Devi V/s -do-	22-01-2014
25.	28/2013	Neela Devi V/s -do-	22-01-2014
26.	58/2013	Raj Kumar V/s Management/Employer Vamsi	22-01-2014

By order,  
R.D. DHIMAN,  
*Pr. Secretary (Labour & Employment).*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref.: No. : 200/2013**

Sh. Dumnu Ram s/o Shri Didia Ram, r/o Village Dhurali, P.O. Langna, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P. *..Respondent.*

08-01-2014.—Present : None for the petitioner.

Sh. Bhuvnesh Awasthi, D.D.A. for the respondent.

Statement of claim/demand not filed. The claimant/petitioner was personally present in the Court on the last date of hearing. He has not turned up today despite knowledge. The case has been called out repeatedly at intervals before and after the lunch. It is already 3.30 P.M.

2. The above noted facts amply demonstrate that the petitioner (Sh. Dumnu Ram) is not interested to pursue the matter. Since the petitioner has failed to file any statement of claim/demand, it can be safely said that he is not entitled to any relief. For want of statement of claim/demand, it is held that no artificial/fictional break in service was provided to the petitioner by the respondent during the course of employment (as per the reference) as alleged.

3. Ordered accordingly. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

6. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref.: No. : 208/2013**

Sh. Ramesh Chand s/o Sh. Jonki Ram, r/o Village & P.O. Langna, Tehsil Joginder Nagar,  
Distt. Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

*..Respondent.*

08-01-2014.—Present: None for the petitioner.

Sh. Bhuvnesh Awasthi, D.D.A. for the respondent.

Statement of claim/demand not filed. The claimant/petitioner was personally present in the Court on the last date of hearing. He has not turned up today despite knowledge. The case has been called out repeatedly at intervals before and after the lunch. It is already 3.30 p.m.

2. The above noted facts amply demonstrate that the petitioner (Sh. Ramesh Chand) is not interested to pursue the matter. Since the petitioner has failed to file any statement of claim/demand, it can be safely said that he is not entitled to any relief. For want of statement of claim/demand, it is held that no artificial/fictional break in service was provided to the petitioner by the respondent during the course of employment (as per the reference) as alleged.

3. Ordered accordingly. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

6. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref.: No. : 206/2013**

Sh. Ram Singh s/o Shri Sai Ram, r/o Village Salahan, P.O. Khaddar, Tehsil Joginder Nagar,  
Distt. Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, B&R Division HPPWD, Joginder Nagar, District Mandi, H.P.

*..Respondent.*

08-01-2014.—Present: None for the petitioner.

Sh. Bhuvnesh Awasthi, D.D.A. for the respondent.

The claimant/petitioner Sh. Ram Singh is absent despite personal service. He was also served personally for the last date of hearing i.e. 13-12-2013, but did not attend the Court. The summons sent for the service of the petitioner for 13-12-2013 were in-fact received in the Court duly served on 16-12-2013 i.e. after the expiry of the due date. Today, the case has been called out repeatedly at intervals before and after the lunch. It is already 3.00 p.m. The petitioner has not come present despite knowledge.

2. The above noted facts amply demonstrate that the petitioner (Sh. Ram Singh) is not interested to pursue the matter. Consequently, he is not entitled to any relief. For want of statement of claim/demand, it is held that no intentional breaks in service were provided to the petitioner by the respondent during the course of employment (as per the reference) as alleged.

3. Ordered accordingly. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

6. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref.: No. : 193/2013**

Sh. Om Prakash s/o Shri Todar Ram, r/o Village Banoh, P.O. Panjalag, Tehsil Joginder Nagar, Distt. Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, B&amp;R Division HPPWD, Joginder Nagar, District Mandi, H.P.

*..Respondent.*

08-01-2014.—Present: None for the petitioner.

Sh. Bhuvnesh Awasthi, D.D.A. for the respondent.

The claimant/petitioner Sh. Om Prakash is absent despite personal service. He was also served personally for the last date of hearing i.e. 13-12-2013, but did not attend the Court. The summons sent for the service of the petitioner for 13-12-2013 were in-fact received in the Court duly served on 16-12-2013 i.e. after the expiry of the due date. Today, the case has been called out repeatedly at intervals before and after the lunch. It is already 3.00 p.m. The petitioner has not come present despite knowledge.

2. The above noted facts amply demonstrate that the petitioner (Sh. Om Prakash) is not interested to pursue the matter. Consequently, he is not entitled to any relief. For want of statement of claim/demand, it is held that no intentional breaks in service were provided to the petitioner by the respondent during the course of employment (as per the reference) as alleged.

3. Ordered accordingly. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

6. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)  
*Presiding Judge,  
 Labour Court-cum-Industrial  
 Tribunal, Dharamshala, H.P.*

---

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref.: No. : 199/2013**

Shri Hoshiyar Singh s/o Sh. Moji Ram, r/o Village Patt, P.O. Dull, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

Executive Engineer, B &amp; R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.

*..Respondent.*

08-01-2014.—Present: Petitioner in person.

Sh. Bhuvnesh Awasthi, D.D.A for the respondent.

The petitioner/claimant has made the below given statement in the Court today:-

“मेरा दूसरा मुकदमा Ref. No. 185/13 इसी अदालत में विचाराधीन है, जिस कारण मैं यह मुकदमा यानि Ref. No. 199/13 न चलाना चाहता हूँ। दाखिल दफ्तर किया जावे।

RO & AC

P.J.”

Sd/-

08-01-14

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref.: No. : 07/2013**

Shri Jai Gopal s/o Late Sh. Arjun Singh, Village Kalhali, P.O. Bajaura, Tehsil & Distt. Kullu, H.P. at present residing at Village Devdhar, P.O. Talyahar, Tehsil & Distt. Mandi, H.P.  
..Petitioner.

*Versus*

The Executive Engineer, IPH Division Kullu, Distt. Kullu, H.P.

..Respondent.

08-01-2014.—Present: Petitioner in person.

Sh. Bhuvnesh Awasthi, D.D.A for the respondent.

Rejoinder filed. At this stage, the claimant/petitioner Sh. Jai Gopal has made the below given statement in the Court today:-

“मैं यह मुकदमा न चलाना चाहता हूँ। दाखिल दफ्तर किया जावे।

RO & AC

P.J.”

Sd/-

08-01-14

2. Ordered accordingly. Parties to bear their own costs.

The reference is answered in the aforesaid terms.

4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)  
*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

---

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref.: No. : 186/2013**

Smt. Drumku Devi w/o Shri Pyare Lal, r/o Village & P.O. Drahal, Tehsil Joginder Nagar,  
District Mandi, H.P. *..Petitioner.*

*Versus*

Executive Engineer, B & R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.  
*..Respondent.*

08-01-2014.—Present: None for the petitioner.

Sh. Bhuvnesh Awasthi, D.D.A for the respondent.

Ld. D.D.A. for the respondent states at bar that since the claimant/petitioner has failed to file any statement of claim/demand, he does not want to file any reply. Ld. D.D.A also states at bar that no fictional breaks in service were provided to the petitioner as alleged.

2. The perusal of the file discloses that Smt. Drumku Devi (petitioner) was personally served in this case for 13-12-2013. She did not appear in the Court on that date. Up-till now, no statement of claim/demand has been preferred by the petitioner/workman.

3. Such being the situation, I have no hesitation to conclude that no artificial/intentional break in service was provided to the petitioner by the respondent during the period of her employment (as per the reference) as alleged.

4. Parties to bear their own costs.

5. The reference is answered in the aforesaid terms.

6. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.



7. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)  
*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref.: No. : 191/2013**

Smt. Meena Devi w/o Shri Devi Singh, r/o Village Thana Ropru, P.O. Drubbal, Tehsil Joginder Nagar, District Mandi, H.P. *..Petitioner.*

*Versus*

The Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P.

*..Respondent.*

08-01-2014.—Present: None for the petitioner.

Sh. Bhuvnesh Awasthi, D.D.A for the respondent.

Ld. D.D.A. for the respondent states at bar that since the claimant/petitioner has failed to file any statement of claim/demand. he does not want to file any reply. Ld. D.D.A also states at bar that no fictional breaks in service were provided to the petitioner as alleged.

2. The perusal of the file discloses that Smt. Meena Devi (petitioner) was personally served in this case for 13-12-2013. She did not appear in the Court on that date. Up-till now, no statement of claim/demand has been preferred by the petitioner/workman.

3. Such being the situation, I have no hesitation to conclude that no artificial/intentional break in service was provided to the petitioner by the respondent during the period of her employment (as per the reference) as alleged.

4. Parties to bear their own costs.

5. The reference is answered in the aforesaid terms.

6. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

7. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)  
*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref.: No. : 196/2013**

Sh. Labh Singh s/o Shri Kundan Lal, r/o Village Makrori, Tehsil Joginder Nagar, District Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, B & R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. ..Respondent.

08-01-2014.—Present: None for the petitioner.

Sh. Bhuvnesh Awasthi, D.D.A for the respondent.

Ld. D.D.A. for the respondent states at bar that since the claimant/petitioner has failed to file any statement of claim/demand, he does not want to file any reply. Ld. D.D.A also states at bar that no fictional breaks in service were provided to the petitioner as alleged.

2. The perusal of the file discloses that Sh. Labh Singh (petitioner) was personally served in this case for 13-12-2013. He did not appear in the Court on that date. Up-till now, no statement of claim/demand has been preferred by the petitioner/workman.

3. Such being the situation, I have no hesitation to conclude that no artificial/intentional break in service was provided to the petitioner by the respondent during the period of his employment (as per the reference) as alleged.

4. Parties to bear their own costs.

5. The reference is answered in the aforesaid terms.

6. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

7. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)  
*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref.: No. : 136/2013**

Shri Vikas Singh s/o Late Shri Subhash Chand, r/o Village & P.O. Tiara, Tehsil and District Kangra, H.P. ..Petitioner.

*Versus*

The President, Parent Teachers Association, Government Senior Secondary School, Tiara,  
Tehsil & District Kangra, H.P. ..Respondent.

09-01-2014.—Present: Petitioner with Sh. Pankaj Satwalia, Adv. vice csl.

Sh. Swaroop Singh, Pradhan, P.T.A (respondent) in person.

Statement of claim/demand not filed by the petitioner. He (claimant/petitioner) has made the below given statement in the Court today:-

“मैं यह केस न चलाना चाहता हूँ। दाखिल दफ्तर किया जावे।  
मैं आजकल किसी और जगह पर नौकरी करता हूँ।

RO & AC

P.J.”

Sd/-

09-01-14

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Records.

Announced:

(RAJAN GUPTA)  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref.: No. : 182/2013**

Shri Sanjeev Kumar s/o Shri Ram Krishan, through Shri B.S. Verma, Vice President H.P.  
State Committee, INTUC, Bilaspur, District Bilaspur, H.P. ..Petitioner.

*Versus*

The Executive Officer, Municipal Council, Shri Naina Deviji, District Bilaspur, H.P.  
..Respondent.

14-01-2014.—Present: Petitioner (Sh. Sanjeev Kumar) in person.

Sh. Parkash Chand Sharma, Executive Officer, Shri Naina Deviji, (respondent) in person.

Statement of claim/demand not filed by the claimant/petitioner. Instead, he has made the below given statement in the Court today:-

“मैं यह मुकदमा न चलाना चाहता हूँ। दाखिल दफ्तर किया जावे।

मुझे प्रतिवादी ने नौकरी से कभी न निकाला ।

RO & AC

P.J.”

Sd/-

14-01-14

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Records.

Announced:

(RAJAN GUPTA)  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref.: No. : 138/2013**

Sh. Ajeet Singh s/o Shri Sukhram, r/o Village Lodar, P.O. Ropri, Tehsil Badsar, District Hamirpur, H.P. ..Petitioner.

*Versus*

The Divisional Forest Officer, Hamirpur Forest Division, Hamirpur, District Hamirpur, H.P. ..Respondent.

14-01-2014.—Present: Petitioner with Sh. S.S. Sippy, A.R.

Sh. Anil Joshi, D.F.O., Hamirpur (respondent) with Sh. Bhuvnesh Awasthi, D.D.A.

Rejoinder not filed. The parties have compromised. Their statements recorded separately. The same are reproduced below verbatim for ready reference:-

“ब्यान श्री अनिल जोशी, आयु 48 वर्ष, Divisional Forest Officer, हमीरपुर, जिला हमीरपुर, हि0प्र0

S.A.

On.  
14-01-2014

वादी अजीत सिंह हमारे पास नौकरी पर वर्ष 2006 में लगा था । जैसा कि उसके Mandays chart में दर्शाया गया है । वादी को मौसमी काम के लिए बजट व काम की उपलब्धता अनुसार समय-समय पर काम पर रखा जाता था । उसे हमने नौकरी से कभी न निकाला । हम वादी की वरिष्ठता को देखते हुए उसे पहले की तरह ही मौसमी कामों के लिए रखने को तैयार है । काम वादी को बजट व काम की उपलब्धता अनुसार आधार रेंज या उसके नजदीक वाली रेंजेंज में देते रहेंगे । जब भी काम उपलब्ध होगा हम वादी को लिखित नोटिस द्वारा सूचित करेंगे ताकि वह नर्सरी आदि में duty join कर सके ।

RO &amp; AC

P.J.

Sd/-

14-01-14

ब्यान वादी अजीत सिंह s/o श्री सुख राम आयु 36 वर्ष, R/O गांव लोडर डा0 रोपड़ी तहसील बड़सर जिला हमरीपुर हि0प्र0।

On. S.A.

14-01-2014

उपरोक्त ब्यान श्री अनिल जोशी (प्रतिवादी) सुन लिया है इससे सहमत हूँ। मैं जब भी प्रतिवादी मुझे काम पर आने के लिए नोटिस देगा उसे प्राप्त करूंगा और निश्चित तिथि पर duty पर report करूंगा। यह मुकदमा न चलाना चाहता हूँ। समझौता हो गया है। मुकदमा दाखिल दफ्तर किया जावे।

RO &amp; AC

P.J.”

Sd/-

14-01-14

Ref: 138/13

14-01-2014

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. Be consigned to the Records after due completion.

Announced:

(RAJAN GUPTA)  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref: No. : 01/2011**

1. Smt. Rita Sharma w/o Shri Rattan Lal, r/o Village Soldha, Tehsil Sadar, Distt. Bilaspur, H.P.
2. Shri B.S. Verma, Vice President, INTUC H.P. State Near Water Tank, Kosarian Sector, Distt. Bilaspur, H.P. ..Petitioner(s).

*Versus*

1. The Chairman, Sh. Sushil Pundir, SDMC, Mid Day Meal Committee, Sr. Sec. School Soldha, Distt. Bilaspur, H.P.

2. Sh. Shashi Verma s/o Sh. Ganga Ram, r/o Village Soldha, PTA Pradhan & Member SDMC, Sr. Sec. School Soldha, Distt. Bilaspur, H.P.
3. Sh. Sant Ram Kondal, President, Gram Panchayat, Soldha, Member SDMC, Sr. Sec. School, Soldha, Distt. Bilaspur, H.P. *..Respondent(s).*

14-01-2014.—Present: Petitioner (Smt. Rita Sharma) in person.

Sh. S.S. Sippy, A.R. for the petitioner.

Sh. Sushil Pundir (respondent No. 1) in person.

Sh. Sant Ram Kondal (respondent No. 3) with Sh. Virender Thakur, Adv.

Previous costs of Rs. 1000/- paid and accepted. The respondent No. 1 and the ld. csl. for the respondent No. 3 have given separate statements to the effect that since the issue involved is of legal nature, they do not want to cross-examine Smt. Rita Sharma (PW-1) and lead any evidence.

2. At this stage, ld. Authorised Representative for the claimant/petitioner has made the below given statement in the Court :-

“इस न्यायालय के आदेश/Award दिनांक 20-05-2013 अनुसार वादिनी श्रीमती रीता शर्मा को प्रतिवादिगण ने दोबारा वर्ष, 2013 में सोलधा स्कूल में बतौर Mid-

day meal worker काम पर रख लिया था। वादिनी ने दो महिने स्कूल में काम किया जिसकी उसे तनख्वाह दी गई। उसके बाद दोबारा स्कूल प्रबन्धकों ने वादिनी को वर्ष 2013 में नौकरी से निकाल दिया। वर्ष 2013 में नौकरी से निकालने बारा वादिनी नया demand notice प्रतिवादीगण को जारी करेगी, क्योंकि 03-12-2009 को नौकरी से निकालने बारा reference/claim infructuous हो चुका है। मैं यह केस न चलाना चाहता हूँ। दाखिल दफ्तर किया जावे।

RO & AC

P.J.”

Sd/-

14-01-14

3. Ordered accordingly. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

14-01-2014

Ref: No. 01/2011

5. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.

6. File after due completion be consigned to the Records.

Announced:

(RAJAN GUPTA)  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref.: No. : 58/2013**

Shri Raj Kumar s/o Shri Chanu Ram, r/o Village & P.O. Kathla, Tehsil Sinhuta, District Chamba, H.P. ..Petitioner.

*Versus*

1. The Management/Employer of Vamsi Industrial Power Ltd., Lanco Infratech Ltd., Drinidhar Project, Tehsil Shahpur, District Kangra, H.P. (Present Address)
2. M/S Lanco Infratech Ltd., Plot No. 397, Udhog Vihar, Phase-3, Gurgaon-122016, Haryana. (Corporate Address). ..Respondents.

22-01-2014.—Present: Sh. Pradeep Kumar, Adv., csl. for the petitioner.

Sh. S.K. Nanda, Adv., vice csl. for the respondents.

Statement of claim/demand not filed by the petitioner despite the grant of last opportunity. Instead, her/his ld. csl. has made the below given statement in the Court today:- “I do not want to proceed with this reference/claim for the present. It be dismissed as withdrawn. My client will issue a fresh demand notice to the respondent for the redressal of his/her grievances, if the need arises.

RO & AC

P.J.”

Sd/-

22-01-14

2. Ordered accordingly. Parties to bear their own costs.
3. The reference is answered in the aforesaid terms.
4. A copy of this Order/Award be sent to the appropriate Government for further necessary action at its end.
5. File after due completion be consigned to the Record Room.

Announced:

(RAJAN GUPTA)  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref. No. : 123/2011**

**Date of Institution : 16.11.2011**

**Date of Decision : 10.01.2014**

Shri Bableet Kumar s/o Shri Multan Singh, r/o VPO Kalruhi, Tehsil Amb, District Una, H.P. ..Petitioner.

*Versus*

The Managing Director, M/S Crest Steel and Power Pvt. Ltd. VPO Kalruhi, Tehsil Amb, Distt. Una, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. R.K. Singh Parmar, AR

For the Respondent : Sh. Onkar Singh, Adv.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Bableet Kumar S/O Sh. Multan Singh, VPO Kalruhi, Tehsil Amb, Distt. Una, H.P. by the management of M/s Crest Steel and Power Pvt. Ltd. VPO Kalruhi, Tehsil Amb, Distt. Una, H.P. w.e.f. 19.8.2010 without serving charge-sheet, without holding enquiry and without following the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, to what back wages, service benefits and relief the above named worker is entitled to from the concerned management?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a helper by the respondent/management on 01.11.2009. He continuously worked as such up-to 18.9.2010 as well as completed 297 days of work. No complaint regarding his work and conduct was received from 29.12.2009 to 18.9.2010. On 19<sup>th</sup> September, 2010, he went to join his duty as usual. The gatekeeper told him (petitioner) that his entry in the factory premises has been prohibited by the management. He made a number of attempts to re-join the duty, but was not allowed to work on one pretext or the other. On 19.9.2010, his services were infact terminated by the respondent illegally and arbitrarily. At the time of the disengagement of his services he was drawing Rs.3,800/- per month as salary. Before the termination of his services, neither any notice was given to him nor he was charge-sheeted. Even no inquiry was conducted against him. At the time of his retrenchment, the persons junior to him were retained in service by the respondent. The latter did not obtain any permission from the concerned authorities to remove him (petitioner) from service. No retrenchment compensation was paid to him. A demand notice was served upon the respondent by him. Conciliation proceedings were initiated by the Labour Inspector, Amb, but in vain. After the termination of his services, he tried his level best to secure the employment, but without any success. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-N of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, he (petitioner) prays that the termination order passed by the respondent be upset. The respondent be directed to reinstate him in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Paras 1 to 14 of the reply are reproduced below verbatim for ready reference:



“1. That para no.1 of the claim statement is wrong and incorrect. The applicant was employed as helper in the company w.e.f. 1-11-2008 to 19-8-2010.

2. That para no.2 of the claim statement is wrong and incorrect. As a matter of fact the applicant did not work honestly in the company and the behavior of the applicant was very disrespectful, defiant and arrogant towards his colleagues and officers. The applicant used to slow down the production by instigating his colleagues either to go on strike or to misbehave with the superiors and officers. The details of incident as quoted as under:-

- i. That on 17-6-2009 the applicant assaulted the then Maintenance Manager Shri Ashwani Sharma who order him to work honestly and not to slow down the production, at this the applicant become furious and lost his temper and assaulted the officer who got some injuries. When a show cause notice issued to the applicant then he tendered his unconditional apology and undertake that he will not repeat this type of behavior in future. The management after taking lenient view warned the applicant and accepted his written apology and he was allow to continue the work.
- ii. Secondly on 23-3-2010 the applicant was on duty and was under the influence of liquor and when he was checked by the then General Manager Marketing of the company Shri Vagish Sharma, he repeated the same incident and used the filthy language through mother and sister and when the management took cognizance, again the applicant tendered his written apology and undertake that he will not repeat this type of behavior in future and he further undertake that in future he will repeat this type of behavior then his services shall be terminated automatically without issuing show cause notice.
- iii. Thirdly on 17-6-2010 the applicant was on rest, but he entered the factory premises when he was under the influence of liquor and entered in the office of R.P. Sharma to provide TMT Bars for his neighborer on the whole sale rate and Shri R.P. Sharma asked the applicant and his neighborer to sit and wait in the time office. At this the applicant became furious and abused Mr. R.P. Sharma in filthy language through mother and sister and when the matter was reported in higher authority, then the applicant tendered his apology in the presence of employees and a final warning was given to the applicant not to repeat this type of incident in future, otherwise the services of the workmen will be terminated without further reference, but the behavior of the applicant did not improved and he repeatedly involved in the same incident.
- iv. That on 18-8-2010 at about 8:00 PM the workmen forcibly dragged and instigated the workers who were on duty to go on strike outside the gate and he with the help of his co-worker damaged the machinery installed in the plant and thereafter sat outside the gate on strike and stopped the production work. The matter was reported to the police and on the intervention of police, the worker then started the work of production, but the behavior of the applicant did not improved and he continued in abusing the management and threatened the management with dire consequences of life.
- v. That on taking into account the disrespectful, defiant and repeated misbehavior of the applicant, the management take a strict action and issue show cause notice to the applicant and placed him under suspension and required him to file the reply. A vague reply was given and inquiry was conducted and by taking into previous conduct of the applicant, the services of the applicant were terminated and full and

final payment through Demand Draft along with termination order was send to the applicant, but the applicant refused to accept the same.

3. That para no. 3 of the claim statement is wrong and incorrect. Since the services of the applicant were terminated w.e.f. August 2010.
4. That para no.4 of the claim statement is wrong and incorrect. Since the workmen was terminated from his duty, so the question of taking him on duty does not arise at all.
5. That para no. 5 of the claim statement is wrong and incorrect. As a matter of fact by taking into account all the repeated incidents and the worker was not making the production to the satisfaction of the management and the management took serious action and close the production in the month of May 2011.
6. That para no.6 of the claim statement is wrong and incorrect. The services of the applicant were terminated in the month of August 2010 by giving him full and final payment amount through Bank Draft, whereas he has not accepted and refused the registered A.D.
7. That para no.7 of the claim statement is wrong and incorrect. A charge sheet was framed, but the applicant did not opt to file the reply and present him in the office after suspension, so the allegations to the contrary are wrong and incorrect.
8. That para no.8 of the claim statement is wrong and incorrect. The services of the applicant were terminated after taking into previous conduct of the applicant and his proved misbehavior and apologies as well as undertaking, the applicant did not improved his behavior, rather the behavior of the applicant become more arrogant and disrespectful towards management, he did not improve his misbehavior and used to take liquor while on duty, since the behavior of the applicant was defiant and disrespectful towards his superiors and bosses as such after exhausting all the remedies, the services of the applicant were terminated. The other contents of this para are wrong and incorrect. Since the workmen was disrespectful and defiant as such the Principal of first come last go was not applicable to him. The whole contents of this para are wrong and incorrect.
9. That para no.9 of the claim statement is wrong and incorrect. The payment of notice period was sent to him through Bank Draft, so the allegation to the contrary is wrong and incorrect.
10. That para no.10 of the claim statement is wrong and incorrect. Since the services of workmen were terminated, so the Principal of retrenchment was not applicable to him.
11. That para no.11 of the claim statement is wrong and incorrect. All the benefits were sent to him through Bank Draft.
12. That para no.12 of the claim statement is wrong and incorrect. The workmen drawn the last payment of Rs. 3,300/- as per the minimum wages Act.
13. That para no.13 of the claim statement is wrong and incorrect. No conciliation proceedings were initiated by the labour officer as such the reference is bad in the eyes of law.
14. That para no.14 of prayer clause of the claim statement is wrong and incorrect. The workmen has been given full opportunity and taking into account his previous conduct and

proved misbehavior the services of workmen were terminated inconsonance with law. The statement of claim is false, frivolous, misconceived and is a bundle of lies, merits dismissal and the termination order of workmen may please be upheld in the interest of justice”.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent. It has been owned that he was employed as a helper in the company on 01.11.2008 and worked up-to 19.8.2010 only. The allegations of misconduct leveled against him are wrong and baseless. No suspension order was issued and delivered to him. Neither he was charge-sheeted nor an inquiry was held against him. No payment was sent to him (petitioner) by the respondent which he refused to accept. He was hired and fired.

5. Per order dated 02.07.2012, following issues were struck:

1. Whether the services of the petitioner were terminated by the respondent wrongly and illegally as alleged? ..OPP.

2. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : No

Relief. : Claim petition dismissed vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Shri Bableet Kumar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that Shri Ashok Kumar is his real brother. Shri Ashok Kumar was also serving the respondent and was the Pradhan of the workers union. A verbal duel had taken place between him (PW1) and the Factory Manager, where after, the matter was reported to the police. He denied that he quarreled with the Factory Manager and thereafter, tendered the written apology dated 23.3.2010, the copy of which is Mark-A. He denied that the original of Mark-A was retained by the police. He feigned ignorance about the fact that Mark-A bears the signatures of his brother Shri Ashok Kumar as well. He denied that on 17.6.2009, he quarreled with Shri Ashwani Sharma (Maintenance Manager). Self stated, a spat had taken place between him and Shri Ashwani Sharma. Letter of apology Ex. R1 (regarding the incident dated 17.6.2009) has not been written by him (PW1). He admitted that Ex. R1 bears his signatures. He denied that the application Mark-B has been written and signed by him. Demand notice Ex. R2 was signed by him (PW1). Letter Ex. R3 bears his signatures. His name and address is written on the envelop Ex. R4. He denied that he used to create ruckus in an inebriated condition in the factory premises. Mark-X (later on exhibited as Ex. RW6/A) and Mark-Y bear his signatures. He does not know the contents of these documents. He admitted that on 23.3.2010, he was on duty. He denied that on that day after consuming the alcohol, he quarreled with Shri Vagesh Sharma, General Manager. He also denied that on 17.6.2010 after consuming the liquor, he entered the factory premises. He refuted

that he is a quarrelsome person and used to beg pardon time and again for his faults. He denied that his services were terminated by the respondent taking into account his act and conduct. He also denied that the bank draft of full and final payment was forwarded to him by the respondent under registered cover which he refused to receive. He denied that to harass his opponent, he has instituted a phoney petition.

9. Conversely, Shri Ashwani Kumar, Senior Manager of the respondent testified as RW3. In his affidavit Ex. RW3/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he stated that he did not lodge any report regarding the misbehavior done by the petitioner on 17.6.2009 as the workman/petitioner had begged the pardon per letter Ex. R1. A written report Ex. RW3/B was made against the petitioner when he came to the factory premises in a drunken condition on 18.8.2010. He is not aware of the fact as to whether the petitioner was charge-sheeted or not. No domestic inquiry was conducted against the petitioner before the termination of his services.

10. Shri Surinder Kumar (RW4) is the General Manager (Finance) of the respondent. In his affidavit Ex. RW4/A, he supported the version of the respondent. He also produced the salary certificate Ex. RW4/B relating to the petitioner.

In the cross-examination, he denied that the services of the petitioner were disengaged unlawfully.

11. Shri Sanjeev Agnihotri (RW5) remained posted as Manager (HR) in the respondent company. He lent credence to the version of the respondent. Ex. RW5/A is the affidavit filed by him as per Order 18 Rule 4 CPC. He also stated that a show cause notice was issued to the petitioner by him (RW5) in the month of August, 2010. Its copy is Mark-X (subsequently exhibited as Ex. RW6/A). The petitioner refused to receive the said notice.

In the cross-examination, he admitted that the services of the petitioner were terminated by them.

12. Shri Anayat Ali (RW6) deposed that report Ex. RW3/B was lodged by him with the General Manager of the company. The petitioner refused the receipt of the show cause notice Ex. RW6/A because of which it was pasted in the notice board of the company. The petitioner used to instigate the other workers and come to the factory premises in a drunken state. Twice or thrice, the petitioner begged the pardon.

In the cross-examination, he denied that being an employee of the company, he is telling the lies.

13. Head Constable Puran Bhagat Singh (RW1) is M.H.C. Police Station, Amb, District Una. He brought the requisitioned record and proved Ex. RW1/A i.e. the copy of G.D. Entry No. 23 (A), dated 19.8.2010. This rapat was entered against the petitioner on the basis of the complaint made by the respondent.

In the cross-examination, he stated that he is not aware of the fact as to whether the petitioner was subjected to the medical examination or not? Only the Investigating Officer can divulge the said fact.

14. RW2 is Shri Dil Mohamamd, Postman Kalruhi Branch, Tehsil Amb. He stated that he visited the house of the petitioner time and again to deliver the registered letter. The

petitioner/addressee did not meet him because of which the registered letter was returned undelivered. Report Ex. RW2/A dated 04.9.2010 in this regard was made by him (RW2).

15. It is the admitted case of the parties that the services of the petitioner were engaged as a helper on 01.11.2008 and he worked as such up-to 18/19 August, 2010. In para 9 of the claim petition, the petitioner has pleaded that he continuously worked for 297 days. The said fact has been denied by the respondent. There is no denial of the fact that the services of the petitioner were terminated by the respondent as a measure of punishment on 19.8.2010. There is nothing on the record to show that before the retrenchment of the services of the petitioner, he was charge-sheeted by the respondent or an inquiry for the misconduct(s) was conducted against him.

16. The petitioner has not disclosed the name of any person junior to him who was retained in service by the respondent at the time of the termination of the services of the petitioner. Not only this, the petitioner has not divulged the name of any person who was employed by the respondent after the termination in question. Thus, the provisions of Sections 25-G and 25-H of the Act are not attracted in this case.

17. It is well known that a duty is cast upon the workman to show that he had completed 240 days of work in a block of 12 calendar months preceding the date of his termination as envisaged under Section 25-B of the Act. This fact has neither been pleaded nor proved by the petitioner/workman. His mandays chart is not there on the file. For these reasons, it can be safely said that the respondent has not flouted the provisions of Section 25-F of the Act.

18. Ld. Authorized Representative for the petitioner is unable to show me as to how the provisions of Section 25-N of the Act have been contravened by the respondent.

19. Such being the situation, I have no hesitation to conclude that the respondent has not violated any provision of the Act. The disengagement of the services of the petitioner by the respondent is neither illegal nor unjustified. It appears to me that the avarice of the petitioner to grab the job and money has forced him to prefer a totally false and baseless claim. He is not entitled to any relief.

20. This issue is decided against the petitioner and in favour of the respondent.

## **RELIEF (ISSUE NO. 2)**

21. Taking into account my findings on issue No. 1 above, the instant claim petition being meritless, not maintainable and malafide fails. It is, therefore, dismissed. Parties to bear their own costs.

22. The reference is answered in the aforesaid terms.

23. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

24. File after due completion be consigned to the Record Room.

Announced in the open Court today this 10th day of January, 2014.

(RAJAN GUPTA)  
*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref. No. : 123/2013**

**Date of Institution : 24.08.2013**

**Date of Decision : 09.01.2014**

Shri Dev Raj s/o Shri Surjan Singh, r/o Village Outpur, P.O. Outpur, Tehsil Joginder Nagar, Distt. Mandi, H.P. *..Petitioner.*

*Versus*

Executive Engineer, B&R Division, H.P.P.W.D., Joginder Nagar, District Mandi, H.P.

*..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Soham Kaushal, ADA

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Dev Raj S/O Shri Surjan Singh, R/O Village Outpur, P.O. Outpur, Tehsil Joginder Nagar, District Mandi, H.P. w.e.f. 06.03.1999 to 31.08.2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 06.3.1999 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 06.03.1999 to

31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:-

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of March, 1999. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar, who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 15.11.2013, following issues were struck:
  1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent from 06.03.1999 to 31.08.2007 is/was illegal and unjustified as alleged? ..*OPP*.
  2. Whether the claim petition is not maintainable in the present form? ..*OPR*.
  3. Whether the claim petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR*.
  4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*.
5. Relief.
6. I have heard the ld. counsel/AR for the parties and have gone through the case file.
7. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Shri Dev Raj (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri Pawan Kumar Sharma, Executive Engineer (D) Circle Joginder Nagar, HPPWD Joginder Nagar, who is also holding the charge of B&R Division Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for



HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/E were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/B is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/C is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/D is the mandays chart relating to the petitioner.

13. Ex. RW1/E is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Shri Dalip Singh and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and he is working continuously. The mandays chart Ex. RW1/D unfolds that the petitioner was initially employed in the month of March, 1999. The respondent has not pleaded a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/D clarifies that from the month of March, 1999 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/E) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The

petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of his initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

19. Not pressed.

## **ISSUE NO. 3**

20. Taking into account my findings on issue No.1 above, it is held that the State of H.P. and Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the case. They may be proper parties.

21. This issue too is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 4**

22. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

23. While testifying in the Court as PW1, the petitioner has given his age as 42 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

24. This issue is also decided in favour of the petitioner and against the respondent.

## **RELIEF (ISSUE NO. 5)**

25. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to

31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of March, 1999 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of January, 2014.

(RAJAN GUPTA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref. No. : 28/2013**

**Date of Institution : 05.04.2013**

**Date of Decision : 22.01.2014**

Smt. Neela Devi w/o Shri Jagat Ram, r/o VPO Giun, Tehsil Sarkaghat, Distt. Mandi, H.P.  
*..Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division Dharampur, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Raj Kumar Sharma, Adv.

For the Respondent : Sh. Bhuvnesh Awasthi, Dy.D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Neela Devi W/O Sh. Jagat Ram, VPO Giun, Tehsil Sarkaghat, Distt. Mandi by the Executive Engineer, HPPWD Division Dharampur,

H.P. during the years, 1999 and 2002 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?"

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar by the respondent on 1st July, 1998. She continuously worked as such up-to 30.9.1999 as well as completed 240 days of work in a block of 12 calendar months prior to the date of her termination. On 30th September, 1999, her services were terminated by the respondent. Before the disengagement of her services, the procedure prescribed by law was not adopted by the respondent. The persons junior to her namely S/Shri Raju Ram and Prem Singh etc. were retained in service by the respondent. The latter failed to abide by the principle of 'last come first go'. The services of the persons junior to her have already been regularized by the respondent/department. Not only this, 319 other workmen junior to her have been re-engaged by the respondent as per the orders of this Court by ignoring her claim/seniority. Against the retrenchment order, she (petitioner) had preferred Original Application (M) No. 385/1999 before the erstwhile Hon'ble Himachal Pradesh Administrative Tribunal. Such Original Application was allowed by the Hon'ble Administrative Tribunal. The respondent was directed to re-employ her in the same capacity and at the same place where she was working prior to her termination. Against the order/judgment of the Hon'ble Administrative Tribunal, the respondent filed CWP No. 1310 of 2001 before the Hon'ble High Court of Himachal Pradesh. The directions issued by the Hon'ble Administrative Tribunal were not implemented by the respondent due to the filing of the CWP before the Hon'ble High Court of Himachal Pradesh. It was held by the Hon'ble High Court that the Administrative Tribunal had no jurisdiction to deal with the matter. A demand notice was served upon the respondent by her. Conciliation proceedings were initiated by the Labour Officer-cum-Conciliation Officer, Mandi, but in vain. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, she (petitioner) prays that the termination order dated 30.9.1999 passed by the respondent be upset. The respondent be directed to reinstate her in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition is hit by the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.7.1998 and she worked as such up-to 30.9.1999. It has been admitted that the petitioner completed 240 days of work in a block of 12 calendar months preceding the date of her termination. HPPWD Division Dharampur was opened in the month of November, 1998. Earlier, the petitioner worked in Sarkaghat Division of the HPPWD. After opening of the new Division, the petitioner was transferred from Sarkaghat Division to Dharampur Division. The services of the petitioner were never terminated as alleged. Actually, on 30.9.1999, the petitioner left the job voluntarily. She never reported for duty thereafter. Daily waged labourers were retrenched during the month of February, 2004 and on 07.7.2005. The services of the petitioner were not disengaged in the years 2004 or 2005 since she had abandoned the job way back in the year 1999. The retrenched workmen have been re-engaged as per the orders passed by this Court, Hon'ble High Court of Himachal Pradesh and the Chief Engineer, HPPWD Central Zone, Mandi. The services of

the workmen have been regularized as per the policy of the State. Since the petitioner left the job willingly, the question of violation of any provision of the Act does not arise.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 30.7.2013, following issues were struck:-

1. Whether the termination of the services of the petitioner by the respondent in the year 1999 is illegal and unjustified as alleged? ..*OPP.*
2. Whether the claim petition is not maintainable in the present form? ..*OPR.*
3. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ..*OPR.*
4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? ..*OPR.*
5. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ..*OPR.*
6. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged. If so, its effect? ..*OPR.*
7. Relief.

6. At this stage, I will like to highlight that on 30.7.2013 itself the below given order was also passed by this Court:-

“Neither any rejoinder filed nor intended to be filed. Ld. A.R. and csl. for the petitioner state at bar that their client in fact served with the respondent/department upto 30-09-1999 only and they do not press the alleged termination of the services of the petitioner by the respondent/department in the year 2002. The reply submitted by the respondent also indicates that as per record, the petitioner served only upto 30th Sept., 1999”.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:-

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : Not pressed

Issue No. 4 : No

Issue No. 5 : Not pressed

Issue No. 6 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

9. The petitioner Smt. Neela Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that on 30.9.1999, she left the job of her own. She also denied that no person junior to her was retained in service by the respondent and she has instituted a phoney petition.

10. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that all the workmen whose names have been disclosed in paras 3 and 4 of the proof affidavit Ex. PW1/A are junior to the petitioner. They are still working under him and their services have been regularized. He denied that the petitioner worked only up-to 30.9.1999 and the mandays chart produced by him has been falsely prepared. No notice regarding absence from duty was ever given to the petitioner.

11. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Shri Shashi Kant s/o Shri Bihari Lal, a daily wager, working under the respondent. It depicts that Shri Shashi Kant was employed in the month of January, 2000 i.e. after the disengagement of the services of the petitioner.

12. Ex. PW1/C is the copy of the judgment dated December 22, 2009 rendered by the Hon'ble High Court of Himachal Pradesh in CWP No.1310 of 2001 titled as State of Himachal Pradesh versus Smt. Savitri Devi and three others. It unfolds that the order dated 07.3.2001 passed by the Hon'ble Administrative Tribunal was set aside by the Hon'ble High Court on the ground that the Hon'ble Tribunal had no jurisdiction to deal with the matter. The petitioner/workman was given the liberty to initiate appropriate action/proceedings under the Act.

13. Ex. RW1/A is the mandays chart relating to the petitioner.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily rated beldar on 1st July, 1998 and she worked as such up-to 30.9.1999. The assertion/statement of the respondent (RW1) to the effect that the petitioner even served the department after 30.9.1999 being beyond the pleadings cannot be read.

15. The version of the petitioner is that on 30.9.1999, her services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of her own accord and free volition.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

17. The mandays chart Ex. RW1/A unfolds that in the year 1999 i.e. up-to 30.9.1999, the petitioner had served the respondent/department for 248 days.

18. Section 25F of the Act postulates as under:-

“25-F. **Conditions precedent to retrenchment of workmen.**-No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

19. There is nothing on the record to show that before the disengagement of the services of the petitioner, the provisions of the above quoted Section were complied with by the respondent.

20. As already mentioned, Ex. PW1/B is the mandays chart pertaining to Shri Shashi Kant. Its perusal discloses that his services were initially engaged by the respondent in the month of January, 2000 i.e. after the termination of the services of the petitioner. There is not even an iota of evidence on the file to prove that before employing Shri Shashi Kant, an opportunity of re-employment as envisaged under Section 25-H of the Act was afforded to the petitioner by the respondent.

21. Not only this, Shri Anil Sangrai (RW1) in his cross-examination admitted that the persons junior to the petitioner are still working under him. The services of the juniors have also been regularized. This indicates that the respondent failed to abide by the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act.

22. Such being the situation, I have no hesitation to conclude that the termination of the services of the petitioner by the respondent on 30.9.1999 is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

#### **ISSUES NO. 2, 3, 5 AND 6**

24. Not pressed.

#### **ISSUE NO. 4**

25. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by

the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

26. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:-

"19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: "Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed."

27. In Mohan Lal's case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon'ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs. 1,00,000/- (one lac) is paid to the workman by the employer.

28. Now comes the all important question as to what relief should be awarded/granted to the petitioner.

29. At the cost of reiteration, I will like to add that the petitioner served the respondent in the years 1998 and 1999 only. The retrenchment of her services has been held to be bad in the eyes of law in view of the provisions contained in Sections 25-F, 25-G and 25-H of the Act.

30. Against the termination order dated 30.9.1999, the claimant/petitioner had preferred O.A. (M) No.385/1999 before the Hon'ble Administrative Tribunal. Such Original Application was



disposed of by the Hon'ble Administrative Tribunal per order/judgment delivered on 07.3.2001. The Original Application was allowed by the Hon'ble Tribunal. Against the judgment/order dated March 7, 2001 of the Hon'ble Administrative Tribunal, the respondent/State of Himachal Pradesh preferred CWP No.1310 of 2001 before the Hon'ble High Court of Himachal Pradesh. The said CWP was decided by the Hon'ble High Court vide judgment dated 22.12.2009, the copy of which is Ex. PW1/C. While allowing the CWP, it was held by the Hon'ble High Court that the Hon'ble Administrative Tribunal had no jurisdiction to entertain the Original Application. The order of the Hon'ble Administrative Tribunal was set aside. The Hon'ble High Court opined:

“Keeping in view the fact that the respondents as workman employed in a lowly position and the legal position was not clear at the time when the Original Application was filed and disposed of by the Tribunal, we direct that the petitioner, if so advised, may take appropriate action/proceedings under the Industrial Disputes Act. In case, they do so within three months from today, the same shall not be defeated on the ground of the delay or limitation since they were prosecuting the proceeding before the Tribunal and this Court”.

31. The petitioner has placed on the record, the copy of the demand notice dated 03.11.2009 served upon the respondent by her under Section 2-A of the Act. The demand notice was in-fact given by the petitioner before the disposal of the CWP by the Hon'ble High Court.

32. The termination in question took place on 30.9.1999. The same was challenged by the petitioner in the year 1999 itself by instituting Original Application No.385/1999. This shows that the claimant/petitioner raised the dispute immediately after the retrenchment of her services. Her claim is not liable to be defeated in view of the judgment dated 22.12.2009 (Ex. PW1/C) pronounced by the Hon'ble High Court of Himachal Pradesh. Otherwise too, in the reply, the respondent has admitted that the persons junior to the petitioner have already been re-engaged in obedience to the orders passed by the Hon'ble High Court of Himachal Pradesh and this Court/Tribunal.

33. While testifying in the Court as PW1, the petitioner has given her age as 52 years. It is well known that a lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. In the statement of claim/demand, the petitioner has not whispered a single word to the effect that she is/was not gainfully employed. She is thus not entitled to the back wages.

34. Taking into consideration the trite laid down in Mohan Lal's case (cited supra) and all other relevant factors (narrated above), I feel that the petitioner is entitled to the reinstatement of her services. She is also entitled to the seniority and continuity in service.

35. This issue too is decided in favour of the petitioner and against the respondent.

### **RELIEF (ISSUE NO. 7)**

36. As a sequel to my findings on the issues No.1 and 4, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her termination i.e. 30.9.1999 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she

(petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

37. Before parting with this matter, I will like to add that the statement made by the respondent (RW1) and the evidence adduced by him are in-fact beyond the pleadings and contrary to the reply. In the reply, the respondent admitted that the services of the petitioner were engaged on 01.7.1998. In the mandays chart Ex. RW1/A, the date of joining of the petitioner is recorded as 01.8.1998. Further, in the reply, the respondent pleaded that the petitioner left the job on 30.9.1999 and, thereafter, never reported for duty. Strangely, in the mandays chart Ex. RW1/A, it has been mentioned that the petitioner served the respondent/department in the years 2001 and 2002 as well. This amply demonstrates that either the record is not being properly maintained in the office or some mischief is being committed by fudging the record. Such mischief can be like preparing false muster rolls of the workmen showing that they worked in a particular year (in which they never worked) and were paid the wages. The matter being serious, this Court sincerely hopes and trusts that the respondent will take corrective steps at his end.

38. The reference is answered in the aforesaid terms.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

40. File after due completion be consigned to the Record Room.

Announced in the open Court today this 22<sup>nd</sup> day of January, 2014.

(RAJAN GUPTA)  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

---

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref. No. : 31/2013**

**Date of Institution : 05.04.2013**

**Date of Decision : 22.01.2014**

Smt. Neela Devi w/o Shri Amar Singh, r/o Village Putli-fald, P.O. Mandap, Tehsil Sarkaghat, Distt. Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, HPPWD Division Dharampur, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Raj Kumar Sharma, Adv.

For the Respondent : Sh. Bhuvnesh Awasthi, Dy. D.A.

## AWARD

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Neela Devi W/O Shri Amar Singh, Village-Putli-fald, P.O. Mandap, Tehsil Sarkaghat, Distt. Mandi by the Executive Engineer, HPPWD Division Dharampur, H.P. during the years, 1999 and 2002 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar by the respondent on 1st July, 1998. She continuously worked as such up-to 30.9.1999 as well as completed 240 days of work in a block of 12 calendar months prior to the date of her termination. On 30th September, 1999, her services were terminated by the respondent. Before the disengagement of her services, the procedure prescribed by law was not adopted by the respondent. The persons junior to her namely S/Shri Raju Ram and Prem Singh etc. were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. The services of the persons junior to her have already been regularized by the respondent/department. Not only this, 319 other workmen junior to her have been re-engaged by the respondent as per the orders of this Court by ignoring her claim/seniority. Against the retrenchment order, she (petitioner) had preferred Original Application (M) No. 385/1999 before the erstwhile Hon’ble Himachal Pradesh Administrative Tribunal. Such Original Application was allowed by the Hon’ble Administrative Tribunal. The respondent was directed to re-employ her in the same capacity and at the same place where she was working prior to her termination. Against the order/judgment of the Hon’ble Administrative Tribunal, the respondent filed CWP No. 1310 of 2001 before the Hon’ble High Court of Himachal Pradesh. The directions issued by the Hon’ble Administrative Tribunal were not implemented by the respondent due to the filing of the CWP before the Hon’ble High Court of Himachal Pradesh. It was held by the Hon’ble High Court that the Administrative Tribunal had no jurisdiction to deal with the matter. A demand notice was served upon the respondent by her. Conciliation proceedings were initiated by the Labour Officer-cum-Conciliation Officer, Mandi, but in vain. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, she (petitioner) prays that the termination order dated 30.9.1999 passed by the respondent be upset. The respondent be directed to reinstate her in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition is hit by the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.7.1998 and she worked as such up-to 30.9.1999. It has been admitted that the petitioner completed 240 days of work in a block of 12 calendar months preceding the date of her

termination. HPPWD Division, Dharampur, was opened in the month of November, 1998. Earlier, the petitioner worked in Sarkaghat Division of the HPPWD. After opening of the new Division the petitioner was transferred from Sarkaghat Division to Dharampur Division. The services of the petitioner were never terminated as alleged. Actually, on 30.9.1999, the petitioner left the job voluntarily. She never reported for duty thereafter. Daily waged labourers were retrenched during the month of February, 2004 and on 07.7.2005. The services of the petitioner were not disengaged in the years 2004 or 2005 since she had abandoned the job way back in the year 1999. The retrenched workmen have been re-engaged as per the orders passed by this Court, Hon'ble High Court of Himachal Pradesh and the Chief Engineer, HPPWD, Central Zone, Mandi. The services of the workmen have been regularized as per the policy of the State. Since the petitioner left the job willingly, the question of violation of any provision of the Act does not arise.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 30.7.2013, following issues were struck:—

1. Whether the termination of the services of the petitioner by the respondent in the year 1999 is illegal and unjustified as alleged? ..*OPP*.
2. Whether the claim petition is not maintainable in the present form? ..*OPR*.
3. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ..*OPR*.
4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? ..*OPR*.
5. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ..*OPR*.
6. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged. If so, its effect? ..*OPR*.
7. Relief.

6. At this stage, I will like to highlight that on 30.7.2013 itself the below given order was also passed by this Court:—

“Neither any rejoinder filed nor intended to be filed. *Ld. A.R.* and *csl.* for the petitioner state at bar that their client in fact served with the respondent/department upto 30-09-1999 only and they do not press the alleged termination of the services of the petitioner by the respondent/department in the year 2002. The reply submitted by the respondent also indicates that as per record, the petitioner served only upto 30th Sept., 1999”.

7. I have heard the *ld. counsel/AR* for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

---

Issue No. 2	: Not pressed
Issue No. 3	: Not pressed
Issue No. 4	: No
Issue No. 5	: Not pressed
Issue No. 6	: Not pressed
Relief.	: Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

9. The petitioner Smt. Neela Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that on 30.9.1999, she left the job of her own. She also denied that no person junior to her was retained in service by the respondent and she has instituted a phoney petition.

10. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that all the workmen whose names have been disclosed in paras 3 and 4 of the proof affidavit Ex. PW1/A are junior to the petitioner. They are still working under him and their services have been regularized. He denied that the petitioner worked only up-to 30.9.1999 and the mandays chart produced by him has been falsely prepared. No notice regarding absence from duty was ever given to the petitioner.

11. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Shri Shashi Kant s/o Shri Bihari Lal, a daily wager, working under the respondent. It depicts that Shri Shashi Kant was employed in the month of January, 2000 i.e. after the disengagement of the services of the petitioner.

12. Ex. PW1/C is the copy of the judgment dated December 22, 2009 rendered by the Hon'ble High Court of Himachal Pradesh in CWP No.1310 of 2001 titled as State of Himachal Pradesh versus Smt. Savitri Devi and three others. It unfolds that the order dated 07.3.2001 passed by the Hon'ble Administrative Tribunal was set aside by the Hon'ble High Court on the ground that the Hon'ble Tribunal had no jurisdiction to deal with the matter. The petitioner/workman was given the liberty to initiate appropriate action/proceedings under the Act.

13. Ex. RW1/A is the mandays chart relating to the petitioner.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily rated beldar on 1st July, 1998 and she worked as such up-to 30.9.1999. The assertion/statement of the respondent (RW1) to the effect that the petitioner even served the department after 30.9.1999 being beyond the pleadings cannot be read.

15. The version of the petitioner is that on 30.9.1999, her services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of her own accord and free volition.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

17. The mandays chart Ex. RW1/A unfolds that in the year 1999 i.e. up-to 30.9.1999, the petitioner had served the respondent/department for 244 days.

18. Section 25-F of the Act postulates as under:—

“25-F. **Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

19. There is nothing on the record to show that before the disengagement of the services of the petitioner, the provisions of the above quoted Section were complied with by the respondent.

20. As already mentioned, Ex. PW1/B is the mandays chart pertaining to Shri Shashi Kant. Its perusal discloses that his services were initially engaged by the respondent in the month of January, 2000 i.e. after the termination of the services of the petitioner. There is not even an iota of evidence on the file to prove that before employing Shri Shashi Kant, an opportunity of re-employment as envisaged under Section 25-H of the Act was afforded to the petitioner by the respondent.

21. Not only this, Shri Anil Sangrai (RW1) in his cross-examination admitted that the persons junior to the petitioner are still working under him. The services of the juniors have also been regularized. This indicates that the respondent failed to abide by the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act.

22. Such being the situation, I have no hesitation to conclude that the termination of the services of the petitioner by the respondent on 30.9.1999 is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

**ISSUES NO. 2, 3, 5 AND 6**

24. Not pressed.

**ISSUE NO. 4**

25. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

26. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon’ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:—

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

27. In Mohan Lal’s case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon’ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs. 1,00,000/- (one lac) is paid to the workman by the employer.

28. Now comes the all important question as to what relief should be awarded/granted to the petitioner.

29. At the cost of reiteration, I will like to add that the petitioner served the respondent in the years 1998 and 1999 only. The retrenchment of her services has been held to be bad in the eyes of law in view of the provisions contained in Sections 25-F, 25-G and 25-H of the Act.

30. Against the termination order dated 30.9.1999 the claimant/petitioner had preferred O.A. (M) No.385/1999 before the Hon'ble Administrative Tribunal. Such Original Application was disposed of by the Hon'ble Administrative Tribunal per order/judgment delivered on 07.3.2001. The Original Application was allowed by the Hon'ble Tribunal. Against the judgment/order dated March 7, 2001 of the Hon'ble Administrative Tribunal the respondent/State of Himachal Pradesh preferred CWP No.1310 of 2001 before the Hon'ble High Court of Himachal Pradesh. The said CWP was decided by the Hon'ble High Court vide judgment dated 22.12.2009, the copy of which is Ex. PW1/C. While allowing the CWP, it was held by the Hon'ble High Court that the Hon'ble Administrative Tribunal had no jurisdiction to entertain the Original Application. The order of the Hon'ble Administrative Tribunal was set aside. The Hon'ble High Court opined:

“Keeping in view the fact that the respondents as workman employed in a lowly position and the legal position was not clear at the time when the Original Application was filed and disposed of by the Tribunal, we direct that the petitioner, if so advised, may take appropriate action/proceedings under the Industrial Disputes Act. In case, they do so within three months from today, the same shall not be defeated on the ground of the delay or limitation since they were prosecuting the proceeding before the Tribunal and this Court”.

31. The petitioner has placed on the record the copy of the demand notice dated 03.11.2009 served upon the respondent by her under Section 2-A of the Act. The demand notice was infact given by the petitioner before the disposal of the CWP by the Hon'ble High Court.

32. The termination in question took place on 30.9.1999. The same was challenged by the petitioner in the year 1999 itself by instituting Original Application No.385/1999. This shows that the claimant/petitioner raised the dispute immediately after the retrenchment of her services. Her claim is not liable to be defeated in view of the judgment dated 22.12.2009 (Ex. PW1/C) pronounced by the Hon'ble High Court of Himachal Pradesh. Otherwise too, in the reply, the respondent has admitted that the persons junior to the petitioner have already been re-engaged in obedience to the orders passed by the Hon'ble High Court of Himachal Pradesh and this Court/Tribunal.

33. While testifying in the Court as PW1, the petitioner has given her age as 48 years. It is well known that a lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. In the statement of claim/demand, the petitioner has not whispered a single word to the effect that she is/was not gainfully employed. She is thus not entitled to the back wages.

34. Taking into consideration the trite laid down in Mohan Lal's case (cited supra) and all other relevant factors (narrated above), I feel that the petitioner is entitled to the reinstatement of her services. She is also entitled to the seniority and continuity in service.

35. This issue too is decided in favour of the petitioner and against the respondent.

#### **RELIEF (ISSUE NO. 7)**

36. As a sequel to my findings on the issues No.1 and 4, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and



quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her termination i.e. 30.9.1999 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

37. Before parting with this matter, I will like to add that the statement made by the respondent (RW1) and the evidence adduced by him are in-fact beyond the pleadings and contrary to the reply. In the reply, the respondent admitted that the services of the petitioner were engaged on 01.7.1998. In the mandays chart Ex. RW1/A, the date of joining of the petitioner is recorded as 01.1.1999. Further, in the reply, the respondent pleaded that the petitioner left the job on 30.9.1999 and, thereafter, never reported for duty. Strangely, in the mandays chart Ex. RW1/A, it has been mentioned that the petitioner served the respondent/department in the years 2001 and 2002 as well. This amply demonstrates that either the record is not being properly maintained in the office or some mischief is being committed by fudging the record. Such mischief can be like preparing false muster rolls of the workmen showing that they worked in a particular year (in which they never worked) and were paid the wages. The matter being serious, this Court sincerely hopes and trusts that the respondent will take corrective steps at his end.

38. The reference is answered in the aforesaid terms.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

40. File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of January, 2014.

(RAJAN GUPTA)  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

---

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref. No. : 325/2012**

**Date of Institution : 03.9.2012**

**Date of Decision : 09.01.2014**

Smt. Nirmla Devi w/o Shri Kanshi Ram, r/o Village Sihan, P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. ..Petitioner.

*Versus*

The Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. ..Respondent

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Soham Kaushal, ADA

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services/giving breaks in services of Smt. Nirmla Devi W/O Shri Kanshi Ram, R/O Village Sihan, P.O. Drahal, Tehsil Joginder Nagar, District Mandi, H.P. from time to time during August, 1998 to 31-08-2007 by the Executive Engineer, H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar on 01.08.1998 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including her (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of her initial engagement up-to 31.8.2007, the respondent/department gave her the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in her (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to her (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to her (petitioner) w.e.f. 01.9.2007. After that, she was allowed to complete 240 days of work in each and every calendar year of her employment. The fictional breaks were given by the respondent arbitrarily. She has been discriminated. The work for which her services were engaged is of permanent nature and is still continuing. From 01.08.1998 to 31.8.2007, she requested the respondent time and again to stop giving her the fictional breaks, but in vain. During the break period, she remained without work and could not get employment anywhere else despite the best efforts. She is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon’ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of February, 1999. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar, who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on her verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, she was duly informed that she has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to her (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to her. Moreover, to meet any exigency or natural disaster/calamity, the department had to keep a permanent gang of the beldars/daily waged workers to be deployed in emergency. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed except in case of the workmen who were employed to meet out the emergent situation. The petitioner is not entitled to any protection under the Act. Now she is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage in the year 2010. She did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, she was gainfully employed as an agriculturist. The Award dated 02.11.2010 rendered in Reference No.110/2006 has no bearing on the facts of this case. The petition is meritless.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 23.9.2013, following issues were struck:

1. Whether time to time termination of the services of the petitioner by the respondent from the month of August, 1998 to 31-08-2007 is/was illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..OPR.
4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..OPR.
5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Smt. Nirmla Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. She does not know that the HPPWD Division, Joginder Nagar was created in the month of January, 2004 and she was transferred to the B&R Division along-with the others. She denied that at the time of the issuance of the muster rolls, it was conveyed to her and other workmen that because of the non availability of the budget, their services are being engaged for 15 or 20 days only. She denied that at the time of receiving the payment or issuance of the muster rolls, she did not raise any objection regarding providing the artificial breaks.

9. Conversely, Shri Pawan Kumar Sharma, Executive Engineer, (D) Circle Joginder Nagar, HPPWD Joginder Nagar, who is also holding the charge of B&R Division Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/E were engaged after the employment of the petitioner and they completed 240 days of work earlier to her. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and her juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/B is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/C is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2<sup>nd</sup> January, 2004 (forenoon).

12. Ex. RW1/D is the mandays chart relating to the petitioner.

13. Ex. RW1/E is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Smt. Geet Devi and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and she is working continuously. The mandays chart Ex. RW1/D unfolds that the petitioner was initially employed on 06.02.1999. The respondent has not pleaded a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/D clarifies that from the month of February, 1999 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/E), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the date of her initial engagement to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

19. Not pressed.

## **ISSUE NO. 3**

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this

Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given her age as 54 years. It is well known that a lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

#### **ISSUE NO. 4**

23. Taking into account my findings on the issues No.1 and 3 above, it is held that the State of H.P. and Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the case. They may be proper parties.

24. This issue too is decided in favour of the petitioner and against the respondent.

#### **RELIEF (ISSUE NO. 5)**

25. As a sequel to my findings on the issues No. 1, 3 and 4 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from the date of her initial engagement except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of January, 2014.

(RAJAN GUPTA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref No. : 126/2013**

**Date of Institution : 24.8.2013**

**Date of Decision : 09.01.2014**

Smt. Pyaro Devi w/o Shri Gandhi Ram, r/o Village Mangail, P.O. Khaddar, Tehsil Lad Bharol, District Mandi, H.P. *..Petitioner.*

*Versus*

Executive Engineer, B&R Division H.P.P.W.D. Division, Joginder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Bhuvnesh Awasthi, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Smt. Pyaro Devi W/O Shri Gandhi Ram, R/O Village Mangail, P.O. Khaddar, Tehsil Lad Bharol, District Mandi, H.P. w.e.f. 07.11.2001 to 31.08.2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar on 07.11.2001 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including her (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of her initial engagement up-to 31.8.2007, the respondent/department gave her the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in her (petitioner's) name despite

the fact that the work for the entire month was available with the respondent/department. The persons junior to her (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to her (petitioner) w.e.f. 01.9.2007. After that, she was allowed to complete 240 days of work in each and every calendar year of her employment. The fictional breaks were given by the respondent arbitrarily. She has been discriminated. The work for which her services were engaged is of permanent nature and is still continuing. From 07.11.2001 to 31.8.2007, she requested the respondent time and again to stop giving her the fictional breaks, but in vain. During the break period, she remained without work and could not get employment anywhere else despite the best efforts. She is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon'ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of November, 1998. His (respondent's) office was created in the month of January, 2004 vide notification dated 9<sup>th</sup> December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division, Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar, who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on her verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, she was duly informed that she has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to her (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to her. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed. The petitioner is not entitled to any protection under the Act. Now she is working continuously



with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage. She did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, she was gainfully employed.

In these circumstances, the respondent prays that the petition in hand be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 15.11.2013, following issues were struck:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent from 07-11-2001 to 31.08.2007 is/was illegal and unjustified as alleged? ..*OPP*.

2. Whether the petition is not maintainable in the present form? ..*OPR*.

3. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR*.

4. Whether the petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR*.

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Smt. Pyaro Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she admitted that her services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. She denied that at the time of issuance of the muster rolls, it was conveyed to her and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. She denied that at the time of receiving the

payment or issuance of the muster rolls, she did not raise any objection regarding providing the artificial breaks. She also denied that the instant industrial dispute has been raised by her at a belated stage.

9. Conversely, Shri Pawan Kumar Sharma, Executive Engineer, (D) Circle Joginder Nagar, HPPWD Joginder Nagar, who is also holding the charge of B&R Division Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/E were engaged after the employment of the petitioner and they completed 240 days of work earlier to her. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and her juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/B is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/C is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/D is the mandays chart relating to the petitioner.

13. Ex. RW1/E is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Shri Dalip Singh and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and she is working continuously. The mandays chart Ex. RW1/D unfolds that the petitioner was initially employed in November, 1998. The respondent has not pleaded a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/D clarifies that from 07/11/2001 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to

be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to her (whose names figure in the list Ex. RW1/E), were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from 07/11/2001 to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## ISSUE NO. 2

19. Not pressed.

## ISSUE NO. 3

20. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

21. While testifying in the Court as PW1, the petitioner has given her age as 56 years. It is well known that a lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the wages for break period.

22. This issue is also decided in favour of the petitioner and against the respondent.

## ISSUE NO. 4

23. Taking into account my findings on the issues No.1 and 3 above, it is held that the State of H.P. and Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the case. They may be proper parties.

24. This issue too is decided in favour of the petitioner and against the respondent.

### RELIEF (ISSUE NO. 5)

25. As a sequel to my findings on the issues No. 1, 3 and 4 above, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. She (petitioner) shall be entitled to the seniority and continuity in service from 07/11/2001 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of January, 2014.

(RAJAN GUPTA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref No. : 124/2013**

**Date of Institution : 24.08.2013**

**Date of Decision : 09.01.2014**

Shri Sant Ram s/o Shri Sher Singh, r/o Village Antola, P.O. Kolang, Tehsil Joginder Nagar,  
Distt. Mandi, H.P. *..Petitioner.*

*Versus*

Executive Engineer, B&R Division, H.P.P.W.D., Joginder Nagar, District Mandi, H.P.

*..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Suresh Sharma, Adv.

For the Respondent : Sh. Soham Kaushal, ADA

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether time to time termination of the services of Shri Sant Ram S/O Sher Singh, R/O Village Antola, P.O. Kolang, Tehsil Joginder Nagar, District Mandi, H.P. w.e.f. year, 2000 to 31.08.2007 by the Executive Engineer, B&R Division H.P.P.W.D., Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that his services were engaged as a daily rated beldar on 01.1.2000 by the HPPWD in the National Highway Division, Joginder Nagar. Later on, the workmen of the said Division including him (petitioner) were put under the control of the newly created HPPWD B&R Division, Joginder Nagar. The new Division came into existence in the month of January, 2004. From the date of his initial engagement up-to 31.8.2007, the respondent/department gave him the fictional breaks from time to time. Muster roll for 15 days in a month used to be issued in his (petitioner's) name despite the fact that the work for the entire month was available with the respondent/department. The persons junior to him (petitioner) working in the same category were allowed to complete 240 days of work in a calendar year by the respondent/department. The names of the juniors are S/Sh. Dalip Singh and Gautam Singh etc. The juniors have also been regularized. The respondent stopped granting the artificial breaks to him (petitioner) w.e.f. 01.9.2007. After that, he was allowed to complete 240 days of work in each and every calendar year of his employment. The fictional breaks were given by the respondent arbitrarily. He has been discriminated. The work for which his services were engaged is of permanent nature and is still continuing. From 01.01.2000 to 31.8.2007, he requested the respondent time and again to stop giving him the fictional breaks, but in vain. During the break period, he remained without work and could not get the employment anywhere else despite the best efforts. He is entitled to the seniority for the break period. This Court/Tribunal has already decided a similar matter i.e. Reference No.110/2006 titled as General Secretary vs. Executive Engineer, HPPWD per Award dated 02.11.2010 in favour of the workmen. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and other provisions of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, as is apparent from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the claim petition of the petitioner may kindly be allowed and he be given the benefit of seniority for the period of fictional breaks alongwith back wages, he be regularized with other consequential service benefits or any other relief, to which this Hon’ble Court deems the petitioner fit under the facts and circumstances stated supra may also be granted in favour of the petitioner and against the respondent HPPWD and the reference may kindly be allowed in favour of the petitioner with cost in the interest of justice and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The State of H.P. and the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar are necessary parties to the case. They have not been joined as parties to the lis. The petition is hit by the vice of delay and laches.

On merits, it has been owned that the services of the petitioner were engaged as a daily wager by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar in the month of August, 1999. His (respondent's) office was created in the month of January, 2004 vide notification dated 9th December, 2003 issued by the Government. The office started functioning w.e.f. 2nd January, 2004. After creation of his (respondent's) office, the petitioner and some other workmen were transferred from the HPPWD, National Highway Division, Joginder Nagar to the HPPWD (B&R) Division Joginder Nagar. The claim of the petitioner prior to 01.1.2004 relates to the office of the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar, who has not been joined as a party to the case. No fictional breaks were provided to the petitioner as alleged. The work was made available to the petitioner on his verbal requests from time to time as per the availability of the funds and requirement. At the time of engaging the services of the petitioner, he was duly informed that he has been engaged for a particular period of 10-15 or 20 days and his (respondent's) office is not in a position to provide the work to him (petitioner) for the whole month. The mandays chart of the petitioner is annexure R2. Almost all the workmen, whose names have been disclosed by the petitioner, are senior to him. The petitioner has not been discriminated. At the time of the disengagement of the workmen due to non availability of the work and the funds, the principle of 'last come first go' was strictly followed. The petitioner is not entitled to any protection under the Act. Now he is working continuously with him (respondent). The instant industrial dispute has been raised by the petitioner at a belated stage. He did not lodge any protest earlier at any point of time. During the period, the petitioner remained out of the job, he was gainfully employed.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 15.11.2013, following issues were struck:

1. Whether time to time termination of the services/giving breaks in service to the petitioner by the respondent from the year 2000 to 31.08.2007 is/was illegal and unjustified as alleged? ..*OPR.*

2. Whether the claim petition is not maintainable in the present form? ..*OPR.*

3. Whether the claim petition is bad for non-joinder of the necessary parties as alleged. If so, its effect? ..*OPR.*

4. Whether the petition is hit by the vice of delay and laches as alleged. If so, its effect? ..*OPR.*

5. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : No

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Shri Sant Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that his services were initially engaged in HPPWD, National Highway Division, Joginder Nagar. HPPWD (B&R) Division, Joginder Nagar was created in the month of January, 2004. He denied that at the time of issuance of the muster rolls, it was conveyed to him and the other workmen that because of the non availability of the budget, their services are being engaged for 10-15 or 20 days only. He denied that at the time of receiving the payment or issuance of the muster rolls, he did not raise any objection regarding providing the artificial breaks. He also denied that the instant industrial dispute has been raised by him at a belated stage.

9. Conversely, Shri Pawan Kumar Sharma, Executive Engineer, (D) Circle Joginder Nagar, HPPWD Joginder Nagar, who is also holding the charge of B&R Division Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he admitted that two Sub Divisions i.e. Joginder Nagar (B&R) and Ladbharol (B&R) were under National Highway Division, Joginder Nagar. The budget for HPPWD Sub Division (B&R), Joginder Nagar was provided by the Himachal Pradesh Government. The budget for the execution of the works carried out by the National Highway Division was provided by the Government of India. He admitted that from the very beginning, the petitioner served in B&R Sub Division, Joginder Nagar and is serving the said Sub Division even now. He admitted that the workmen whose names find mention in Ex. RW1/E were engaged after the employment of the petitioner and they completed 240 days of work earlier to him. No notice regarding absence from duties was ever given to the petitioner. He admitted that the persons junior to the petitioner have already been regularized. The nature of work being done by the petitioner and his juniors was the same. He denied that he has given a phoney statement.

10. Ex. RW1/B is the copy of a notification dated 9th December, 2003 issued by the Public Works Department, Govt. of Himachal Pradesh. It depicts that the National Highways set up was restructured.

11. Ex. RW1/C is the copy of an office order dated 2nd January, 2004 issued by the respondent. It unfolds that the newly created B&R Division, HPPWD, Joginder Nagar became functional w.e.f. 2nd January, 2004 (forenoon).

12. Ex. RW1/D is the mandays chart relating to the petitioner.

13. Ex. RW1/E is the mandays chart/year-wise working days details in respect of the daily waged beldars namely Shri Dalip Singh and nine others.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar and he is working continuously. The mandays chart Ex. RW1/D unfolds

that the petitioner was initially employed in the month of August, 1999. The respondent has not pleaded a single word to the effect that the initial appointment of the petitioner was made against the Rules or in violation of the prescribed procedure.

15. It is an admitted fact that the services of the petitioner were initially engaged by the Executive Engineer, National Highway Division, HPPWD, Joginder Nagar. From the statement made by the respondent (RW1), it can be gathered that two B&R Sub Divisions i.e. Joginder Nagar and Ladbharol were working under National Highway Division, Joginder Nagar. From the very beginning, the petitioner is serving HPPWD (B&R) Sub Division, Joginder Nagar, which admittedly came under the control of the respondent with the creation of new B&R Division at Joginder Nagar in the year 2004. Therefore, it can be safely said that from day one, the petitioner is an employee of B&R Division and not the National Highway Division at Joginder Nagar.

16. The mandays chart Ex. RW1/D clarifies that from the month of January, 2000 to 31.8.2007, work for the entire month was not provided to the petitioner by the respondent. The muster rolls for 10-20 days in a month were issued in the name of the petitioner. If the services of the petitioner used to be engaged for 10-20 days every month due to the non availability of the budget and work, then why the persons junior to him (whose names figure in the list Ex. RW1/E) were provided the work for 240 days or more by the respondent? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. The act and conduct of the respondent goes to show that either he was resorting to favoritism or acting in a partisan manner with one set of the workmen so as to deprive them the status and privileges of permanent workmen entitling them to the regularization of their services as per the policy of the State. Browsing of the record highlights the glaring discrimination perpetuated by the respondent.

17. The action of the respondent in not issuing intentionally the muster roll for the entire month to the workman due to no fault of the workman is nothing but unfair labour practice. The petitioner is to be presumed in continuous and uninterrupted service of the respondent from the month of January, 2000 to 31st August, 2007 as per the provisions contained in Section 25-B of the Act. The breaks given by the respondent being intentional will have no effect on the seniority and continuity in service of the workman (petitioner).

18. This issue is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 2**

19. Not pressed.

## **ISSUE NO. 3**

20. Taking into account my findings on issue No.1 above, it is held that the State of H.P. and Executive Engineer, HPPWD, National Highway Division, Joginder Nagar are not necessary parties to the case. They may be proper parties.

21. This issue too is decided in favour of the petitioner and against the respondent.

## **ISSUE NO. 4**

22. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the



claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

23. While testifying in the Court as PW1, the petitioner has given his age as 44 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the wages for break period.

24. This issue is also decided in favour of the petitioner and against the respondent.

#### **RELIEF (ISSUE NO. 5)**

25. As a sequel to my findings on the various issues, the instant claim petition succeeds in part and the same is partly allowed. The breaks given by the respondent to the petitioner up-to 31.8.2007 being artificial/fictional are held to be wrong and illegal. He (petitioner) shall be entitled to the seniority and continuity in service from the month of January, 2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

26. The reference is answered in the aforesaid terms.

27. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

28. File after due completion be consigned to the Record Room.

Announced in the open Court today this 9th day of January, 2014.

(RAJAN GUPTA)

*Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.*

---

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref .No. : 400/2009**

**Date of Institution : 18.7.2009**

**Date of Decision : 21.01.2014**

Shri Ravi Dutt s/o Shri Som Dutt, r/o Village Tariha, Tehsil Bhatiyat, Distt. Chamba (H.P.)  
..Petitioner.

*Versus*

The Executive Engineer, I.& P.H. Division, Dalhousie, District Chamba, H.P.  
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Naresh Kaul, Adv.

For the Respondent : Sh. Bhuvnesh Awasthi, Dy. D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Sh. Ravi Dutt S/O Shri Som Dutt, by The Executive Engineer, IPH Division Dalhousie, Distt. Chamba (H.P.) w.e.f. 30.11.2000 and retaining the junior workmen, as alleged by worker, is proper and justified? If not, what amount of back wages, seniority, past service benefits and compensation the aggrieved workman is entitled to?”

2. The case of the petitioner (as set out in the prolix statement of claim/demand) is that his services were engaged as a daily waged beldar by the respondent in the year 1988. He worked for more than 240 days from the year 1988 to the year 1991. Since he (petitioner) is a matriculate, from the month of December, 1996 to November, 2000, the services of the works inspector were taken from him. He worked as a works inspector from the year 1997 to November, 2000 as well as completed more than 240 days of work in each and every calendar year of his engagement. In the month of November, 2000 to his utter surprise, he and the other workmen received the termination notices from the respondent. Such notices were issued without assigning any reason due to the political considerations. At the time of his termination, the persons junior to him were retained in service by the respondent. S/Shri Rajinder Singh and Madhi Ram etc. were also issued retrenchment notices by the respondent. However, they were allowed to continue in service. The names of the juniors, who were retained in service by the respondent are S/Sh. Hans Raj and Balak Ram etc. Not only this, after the disengagement of his services, new/fresh hands were recruited by the respondent. The names of the newly appointed persons are S/Shri Pawan Singh and Chaman Singh etc. He was not given an opportunity of re-employment. From the date of his disengagement, he is unemployed. He visited the office of the respondent time and again to re-engage his services, but in vain. He is entitled to the regularization after completion of 10 years of service with all consequential benefits as per the trite laid down by the Hon'ble Apex Court in Mool Raj Upadhaya's case. He has been discriminated. The act and conduct of the respondent is illegal and unjustified. It is also violative of Sections 25-F, 25-G, 25-H and 25-N of the Industrial Disputes Act, 1947 (14 of 1947, 'the Act' for short).

As such, as is evident from the prayer clause of the petition/statement of claim, the petitioner has claimed the following relief(s) in this case:—

“the termination/retrenchment of the claimant by the employer/opposite party may kindly be declared null and void and he may be granted all consequential benefits as also the other

allowances, salary besides being other benefits and regularizations after 10 years of service with seniority and back wages along with interest @ 18% per annum available under law, and other relief (s) to which claimant may be found entitled to, in the peculiar facts circumstances of the case and justice be done”.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been taken to the effect that the claim petition is not maintainable since no legal or fundamental right of the petitioner has been infringed. The petition is hit by the vice of delay and laches. The provisions of Chapter VB of the Act are not attracted in this case. The petitioner has misrepresented himself. He has concealed the material facts from the Court. The petitioner is estopped by his act and conduct from preferring the instant industrial dispute.

On merits, it has been denied that the services of the petitioner were initially engaged as a daily waged beldar in the year 1988. However, it has been pleaded that the petitioner was appointed as a daily rated works inspector in the month of December, 1996. His mandays chart is annexure R-I. Due to the shortage of the funds and the work in the Division, he (respondent) was facing huge financial constraints. It became impossible to adjust all the daily waged workers who were large in number. Due to less budgetary provision, the availability of the work decreased. For this reason, the services of the petitioner and 363 other workmen were no longer required by the department. It was decided to disengage the surplus workers in the absence of the funds. The services of the petitioner and 363 other workers (out of which six workmen fell in the category of works inspector) were disengaged. At the time of the disengagement of the services of the petitioner w.e.f. 30.11.2000, the principle of ‘last come first go’ was strictly adhered to. No new/fresh hands have been employed after the termination of the services of the petitioner. The present dispute has been raised by the petitioner after seven years of his retrenchment. The petitioner is gainfully employed as an agriculturist after the termination of his services. None of the similarly situated workman has been re-employed. The workmen, whose names have been disclosed by the petitioner, are either senior to him or belong to the other category. Some of the workmen have been employed on compassionate grounds. Shri Raj Kumar s/o Shri Kiru Ram is not on his (respondent’s) rolls. No provision of the Act has been flouted. The petitioner is not entitled to the regularization of his services or any other relief as claimed.

In these circumstances, the respondent prays that the petition in hand be dismissed with costs.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Per order dated 02.6.2012, following issues were struck:

1. Whether the termination of the services of the petitioner by the respondent is illegal and unjustified as alleged? ..OPP.
2. Whether the petition is not maintainable in the present form? ..OPR.
3. Whether the petition is bad on account of delay and laches on the part of the petitioner? ..OPR.
4. Whether the petitioner has not come to the Court with clean hands as alleged? ..OPR.
5. Whether the petitioner is estopped from filing the claim petition by his act and conduct as alleged? ..OPR.

6. Relief.

6. I have heard the ld. counsel/AR for the parties and have gone through the case file.

7. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : No

Issue No. 4 : Not pressed

Issue No. 5 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

8. Shri Ravi Dutt (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that the mandays chart Ex. R1 produced by the respondent is correct. He does not know that in the month of October/November, 2000, the availability of the budget and work in the Dalhousie Division was reduced. He admitted that due to these reasons the services of 363 workmen were disengaged by the respondent. Self stated, the work continued and it was got executed through the contractors. He admitted that the termination notices were served upon the workmen by the respondent. Volunteered, no notice was received by him. He denied that the retrenchment compensation was paid to him. He admitted that Smt. Sodha Devi and Smt. Lata Devi were employed on compassionate grounds after the death of their husbands. He admitted that Shri Santosh Kumar was the works inspector. He has not been re-employed and his matter is pending before the Hon'ble High Court. He denied that no person junior to him is serving the respondent/department and he is not entitled to the re-employment etc.

9. Conversely, Shri L.S. Thakur, Executive Engineer, I&PH Division, Dalhousie (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18 Rule 4 CPC, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that Smt. Biasa Devi and Shri Hem Raj have been re-employed. Volunteered, their services have been reengaged as per the orders of the Court. When both the above named workers were re-engaged, a notice of re-employment was not given to the petitioner. He denied that the services of the petitioner were disengaged in a wrongful manner. He admitted that when the services of the petitioner were terminated, the scheme of the department was in progress and the work was available. Self stated, the budget was not available.

10. Ex. R-1 is the mandays chart relating to the petitioner.

1. Ext. R-2 is the copy of notice dated 25.10.2000 served upon the petitioner by the respondent under Section 25-F of the Act. It depicts that the services of the petitioner were disengaged w.e.f. 30.11.2000 (afternoon) due to the non-availability of the work and the funds.
12. Ex. R-3 is the copy of counter foil of the cheque dated 25.10.2k worth Rs. 3,900/- issued in favour of the petitioner by the respondent towards the retrenchment compensation.
13. Ex. RW1/B is the list/detail of the workers who have been mentioned as junior to the petitioner in the claim petition.
14. Ex. RW1/C is the copy of the order dated August 21, 2012 pronounced by the Hon'ble High Court of Himachal Pradesh in CWP No.11042/2011-E titled as The State of Himachal Pradesh through Secretary (IPH) to the Government of H.P. and another versus Sh. Santosh Kumar and another. It unfolds that the operation of the Award passed by this Court was stayed subject to certain conditions.
15. Ex. RW1/D is the seniority list of the daily waged works inspectors, who remained on rolls up-to 31.12.2000 in the office of the respondent.
16. Exts. RW1/E to K are the mandays charts relating to Shri Paras Ram and others.
17. The version of the petitioner is that his services were initially engaged as a daily waged beldar by the respondent in the year 1988. Being a matriculate he served as a works inspector with the respondent/department from December, 1996 to November, 2000. The respondent has pleaded that the petitioner was directly appointed as a daily rated works inspector in the month of December, 1996. His services were never engaged in the year 1988 as claimed. The petitioner (PW1) in his cross-examination admitted that the mandays chart Ex. R1 produced by the respondent is correct. Its perusal discloses that the services of the petitioner were engaged by the respondent in the month of December, 1996 for the first time as a daily waged works inspector. The claimant/petitioner has not placed/exhibited on the file any document to show that he was appointed by the respondent in the year 1988 as claimed.
18. At this stage, I will like to highlight that the post of works inspector is class-III (non-gazetted). Recruitment and Promotion Rules pertaining to the post of works inspector have been framed by the Department of Irrigation and Public Health, Govt. of Himachal Pradesh. As per the R&P Rules for being directly appointed as a works inspector, a person should be a matriculate from the recognized Board/University. He should also possess the knowledge of customs, manners and dialects of Himachal Pradesh besides being suitable for being appointed in the peculiar conditions prevailing in the Pradesh. It is not the case of the petitioner that he held all the requisite qualifications for being directly recruited as a works inspector. Rather, in para 1 of the claim petition, it has been pleaded that he is matric pass. Faced with this situation, the ld. counsel for the petitioner/workman urged that this Court/Tribunal may order the re-engagement of the services of the petitioner as a beldar (instead of the works inspector).
19. It is an admitted fact that the services of the petitioner were terminated by the respondent w.e.f. 30.11.2000 (afternoon) after issuing the notice Ex. R2. The version of the respondent is that the services of the petitioner and 363 other workmen were disengaged due to the non-availability of the work and the funds being surplus. As already mentioned, Ex. RW1/D is the seniority list of the daily waged works inspectors who remained on rolls of the respondent upto 31.12.2000. The name of the petitioner figures at serial No. 21 of the list.
20. Ex. RW1/J i.e. the seniority list of beldar category relating to Shri Angrej Singh and two others reveals that Smt. Sodha Devi was appointed by the respondent in the year 1999,

whereas, the services of Smt. Lata Devi were engaged in the year 2000. Of course, a note has been given on Ex. RW1/J that both these ladies were appointed on compassionate grounds. The dates of deaths of their husbands namely S/Sh. Ashok Kumar and Tarbeej Singh have not come on the file. Admittedly, Smt. Sodha Devi and Smt. Lata Devi are still serving the respondent/department and their services were engaged after the engagement of the services of the petitioner. The dates of engagement of Smt. Sodha Devi and Smt. Lata Devi are 19.11.1999 and 01.5.2000 respectively. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner as per Ex. R1 is December, 1996. There is nothing on the record to show that the deceased husbands of Smt. Sodha Devi and Smt. Lata Devi were senior to the petitioner. This indicates that the persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of the senior is nothing but unfair labour practice.

21. There is no denial of the fact that Reference No.570/2008 titled as Mohinder Kumar versus The Executive Engineer, I&PH Division, Dalhousie was decided by this Court/Tribunal on 01.11.2012. While deciding the said reference, it was held by this Court that after 26.11.2000 new/fresh hands were engaged by the respondent. If the services of the petitioner were disengaged being surplus (as alleged by the respondent), then why new/fresh hands were employed? The reasons to that effect being obscure go to show that the respondent is not speaking the truth. There is nothing on the file to establish that at the time of engaging new/fresh hands or re-engaging the persons junior to the petitioner, an opportunity of re-employment was afforded to him (petitioner).

22. Such being the situation, I have no hesitation to conclude that the respondent has contravened the provisions of Section 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

### ISSUE NO. 3

24. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

25. While testifying in the Court as PW1, the petitioner has given his age as 48 years. It is well known that a young man like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that

nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

26. This issue is also decided in favour of the petitioner and against the respondent.

#### **ISSUES NO. 2, 4 AND 5**

27. Not pressed.

#### **RELIEF (ISSUE NO. 6)**

28. As a sequel to my findings on the issues No.1 and 3 above, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner as a beldar forthwith. He shall be entitled to the continuity and seniority in service from the date of his illegal termination i.e. 30/11/2000 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of his services as per the policies framed by the Government of Himachal Pradesh from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, he (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of his junior(s). Parties to bear their own costs.

29. The reference is answered in the aforesaid terms.

30. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

31. File after due completion be consigned to the Record Room.

Announced in the open Court today this 21st day of January, 2014.

(RAJAN GUPTA)  
Presiding Judge,  
Labour Court-cum-Industrial  
Tribunal, Dharamshala, H.P.

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref No. : 30/2013**

**Date of Institution : 05.04.2013**

**Date of Decision : 22.01.2014**

Smt. Savitri Devi w/o Shri Kashmir Singh, r/o VPO Giun, Tehsil Sarkaghat, Distt. Mandi,  
H.P. ..Petitioner.

*Versus*

The Executive Engineer, HPPWD Division Dharampur, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Raj Kumar Sharma, Adv.

For the Respondent : Sh. Bhuvnesh Awasthi, Dy.D.A.

### **AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Savitri Devi W/O Sh. Kashmir Singh, VPO Giun, Tehsil Sarkaghat, Distt. Mandi by the Executive Engineer, HPPWD Division Dharampur, H.P. during the years, 1999 and 2002 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar by the respondent on 1st July, 1998. She continuously worked as such up-to 30.9.1999 as well as completed 240 days of work in a block of 12 calendar months prior to the date of her termination. On 30th September, 1999, her services were terminated by the respondent. Before the disengagement of her services, the procedure prescribed by law was not adopted by the respondent. The persons junior to her namely S/Shri Raju Ram and Prem Singh etc. were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. The services of the persons junior to her have already been regularized by the respondent/department. Not only this, 319 other workmen junior to her have been re-engaged by the respondent as per the orders of this Court by ignoring her claim/seniority. Against the retrenchment order, she (petitioner) had preferred Original Application (M) No. 385/1999 before the erstwhile Hon’ble Himachal Pradesh Administrative Tribunal. Such Original Application was allowed by the Hon’ble Administrative Tribunal. The respondent was directed to re-employ her in the same capacity and at the same place where she was working prior to her termination. Against the order/judgment of the Hon’ble Administrative Tribunal, the respondent filed CWP No. 1310 of 2001 before the Hon’ble High Court of Himachal Pradesh. The directions issued by the Hon’ble Administrative Tribunal were not implemented by the respondent due to the filing of the CWP before the Hon’ble High Court of Himachal Pradesh. It was held by the Hon’ble High Court that the Administrative Tribunal had no jurisdiction to deal with the matter. A demand notice was served upon the respondent by her. Conciliation proceedings were initiated by the Labour Officer-cum-Conciliation Officer, Mandi, but in vain. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, she (petitioner) prays that the termination order dated 30.9.1999 passed by the respondent be upset. The respondent be directed to reinstate her in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the effect that the claim petition is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition is hit by the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.



On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.7.1998 and she worked as such up-to 30.9.1999. It has been admitted that the petitioner completed 240 days of work in a block of 12 calendar months preceding the date of her termination. HPPWD Division, Dharampur, was opened in the month of November, 1998. Earlier, the petitioner worked in Sarkaghat Division of the HPPWD. After opening of the new Division the petitioner was transferred from Sarkaghat Division to Dharampur Division. The services of the petitioner were never terminated as alleged. Actually, on 30.9.1999, the petitioner left the job voluntarily. She never reported for duty thereafter. Daily waged labourers were retrenched during the month of February, 2004 and on 07.7.2005. The services of the petitioner were not disengaged in the years 2004 or 2005 since she had abandoned the job way back in the year 1999. The retrenched workmen have been re-engaged as per the orders passed by this Court, Hon'ble High Court of Himachal Pradesh and the Chief Engineer, HPPWD Central Zone, Mandi. The services of the workmen have been regularized as per the policy of the State. Since the petitioner left the job willingly, the question of violation of any provision of the Act does not arise.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 30.7.2013, following issues were struck:—

1. Whether the termination of the services of the petitioner by the respondent in the year 1999 is illegal and unjustified as alleged? ..*OPP.*
2. Whether the claim petition is not maintainable in the present form? ..*OPR.*
3. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ..*OPR.*
4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? ..*OPR.*
5. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ..*OPR.*
6. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged. If so, its effect? ..*OPR.*
7. Relief.

6. At this stage, I will like to highlight that on 30.7.2013 itself, the below given order was also passed by this Court:—

“Neither any rejoinder filed nor intended to be filed. Ld. A.R. and csl. for the petitioner state at bar that their client in fact served with the respondent/department upto 30-09-1999 only and they do not press the alleged termination of the services of the petitioner by the respondent/department in the year 2002. The reply submitted by the respondent also indicates that as per record, the petitioner served only upto 30th Sept., 1999”.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : Not pressed

Issue No. 4 : No

Issue No. 5 : Not pressed

Issue No. 6 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

9. The petitioner Smt. Savitri Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that on 30.9.1999, she left the job of her own. She also denied that no person junior to her was retained in service by the respondent and she has instituted a phoney petition.

10. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that all the workmen whose names have been disclosed in paras 3 and 4 of the proof affidavit Ex. PW1/A are junior to the petitioner. They are still working under him and their services have been regularized. He denied that the petitioner worked only up-to 30.9.1999 and the mandays chart produced by him has been falsely prepared. No notice regarding absence from duty was ever given to the petitioner.

11. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Shri Shashi Kant s/o Shri Bihari Lal, a daily wager, working under the respondent. It depicts that Shri Shashi Kant was employed in the month of January, 2000 i.e. after the disengagement of the services of the petitioner.

12. Ex. PW1/C is the copy of the judgment dated December 22, 2009 rendered by the Hon'ble High Court of Himachal Pradesh in CWP No.1310 of 2001 titled as State of Himachal Pradesh versus Smt. Savitri Devi and three others. It unfolds that the order dated 07.3.2001 passed by the Hon'ble Administrative Tribunal was set aside by the Hon'ble High Court on the ground that the Hon'ble Tribunal had no jurisdiction to deal with the matter. The petitioner/workman was given the liberty to initiate appropriate action/proceedings under the Act.

13. Ex. RW1/A is the mandays chart relating to the petitioner.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily rated beldar on 1st July, 1998 and she worked as such up-to 30.9.1999. The

assertion/statement of the respondent (RW1) to the effect that the petitioner even served the department after 30.9.1999 being beyond the pleadings cannot be read.

15. The version of the petitioner is that on 30.9.1999, her services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of her own accord and free volition.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

17. The mandays chart Ex. RW1/A unfolds that in the year 1999 i.e. up-to 30.9.1999, the petitioner had served the respondent/department for 246 days.

18. Section 25-F of the Act postulates as under:—

**“25-F. Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

19. There is nothing on the record to show that before the disengagement of the services of the petitioner, the provisions of the above quoted Section were complied with by the respondent.

20. As already mentioned, Ex. PW1/B is the mandays chart pertaining to Shri Shashi Kant. Its perusal discloses that his services were initially engaged by the respondent in the month of January, 2000 i.e. after the termination of the services of the petitioner. There is not even an iota of evidence on the file to prove that before employing Shri Shashi Kant, an opportunity of re-employment as envisaged under Section 25-H of the Act was afforded to the petitioner by the respondent.

21. Not only this, Shri Anil Sangrai (RW1) in his cross-examination admitted that the persons junior to the petitioner are still working under him. The services of the juniors have also been regularized. This indicates that the respondent failed to abide by the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act.

22. Such being the situation, I have no hesitation to conclude that the termination of the services of the petitioner by the respondent on 30.9.1999 is illegal and unjustified.

23. This issue is decided in favour of the petitioner and against the respondent.

### ISSUES NO. 2, 3, 5 AND 6

24. Not pressed.

### ISSUE NO. 4

25. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to “Whether the reference is barred by time?” Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon’ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon’ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon’ble High Court that “the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief”. Similar view has been expressed by a Division Bench of our Hon’ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

26. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon’ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:—

“19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

27. In Mohan Lal’s case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination.

The Hon'ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

28. Now comes the all important question as to what relief should be awarded/granted to the petitioner?

29. At the cost of reiteration, I will like to add that the petitioner served the respondent in the years 1998 and 1999 only. The retrenchment of her services has been held to be bad in the eyes of law in view of the provisions contained in Sections 25-F, 25-G and 25-H of the Act.

30. Against the termination order dated 30.9.1999 the claimant/petitioner had preferred O.A. (M) No.385/1999 before the Hon'ble Administrative Tribunal. Such Original Application was disposed of by the Hon'ble Administrative Tribunal per order/judgment delivered on 07.3.2001. The Original Application was allowed by the Hon'ble Tribunal. Against the judgment/order dated March 7, 2001 of the Hon'ble Administrative Tribunal, the respondent/State of Himachal Pradesh preferred CWP No.1310 of 2001 before the Hon'ble High Court of Himachal Pradesh. The said CWP was decided by the Hon'ble High Court vide judgment dated 22.12.2009, the copy of which is Ex. PW1/C. While allowing the CWP, it was held by the Hon'ble High Court that the Hon'ble Administrative Tribunal had no jurisdiction to entertain the Original Application. The order of the Hon'ble Administrative Tribunal was set aside. The Hon'ble High Court opined:

“Keeping in view the fact that the respondents as workman employed in a lowly position and the legal position was not clear at the time when the Original Application was filed and disposed of by the Tribunal, we direct that the petitioner, if so advised, may take appropriate action/proceedings under the Industrial Disputes Act. In case, they do so within three months from today, the same shall not be defeated on the ground of the delay or limitation since they were prosecuting the proceeding before the Tribunal and this Court”.

31. The petitioner has placed on the record, the copy of the demand notice dated 26.9.2009 served upon the respondent by her under Section 2-A of the Act. The demand notice was in-fact given by the petitioner before the disposal of the CWP by the Hon'ble High Court.

32. The termination in question took place on 30.9.1999. The same was challenged by the petitioner in the year 1999 itself by instituting Original Application No.385/1999. This shows that the claimant/petitioner raised the dispute immediately after the retrenchment of her services. Her claim is not liable to be defeated in view of the judgment dated 22.12.2009 (Ex. PW1/C) pronounced by the Hon'ble High Court of Himachal Pradesh. Otherwise too, in the reply, the respondent has admitted that the persons junior to the petitioner have already been re-engaged in obedience to the orders passed by the Hon'ble High Court of Himachal Pradesh and this Court/Tribunal.

33. While testifying in the Court as PW1, the petitioner has given her age as 44 years. It is well known that a young lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. In the statement of claim/demand, the petitioner has not whispered a single word to the effect that she is/was not gainfully employed. She is thus not entitled to the back wages.

34. Taking into consideration the trite laid down in Mohan Lal's case (cited supra) and all other relevant factors (narrated above), I feel that the petitioner is entitled to the reinstatement of her services. She is also entitled to the seniority and continuity in service.

35. This issue too is decided in favour of the petitioner and against the respondent.

**RELIEF (ISSUE NO. 7)**

36. As a sequel to my findings on the issues No.1 and 4, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her termination i.e. 30.9.1999 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

37. Before parting with this matter, I will like to add that the statement made by the respondent (RW1) and the evidence adduced by him are in-fact beyond the pleadings and contrary to the reply. In the reply, the respondent admitted that the services of the petitioner were engaged on 01.7.1998. In the mandays chart Ex. RW1/A, the date of joining of the petitioner is recorded as 01.8.1998. Further, in the reply, the respondent pleaded that the petitioner left the job on 30.9.1999 and, thereafter, never reported for duty. Strangely, in the mandays chart Ex. RW1/A, it has been mentioned that the petitioner served the respondent/department in the years 2001 and 2002 as well. This amply demonstrates that either the record is not being properly maintained in the office or some mischief is being committed by fudging the record. Such mischief can be like preparing false muster rolls of the workmen showing that they worked in a particular year (in which they never worked) and were paid the wages. The matter being serious, this Court sincerely hopes and trusts that the respondent will take corrective steps at his end.

38. The reference is answered in the aforesaid terms.

39. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

40. File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of January, 2014.

(RAJAN GUPTA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

---

IN THE COURT OF RAJAN GUPTA, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, DHARAMSHALA, H.P.

**Ref No. : 29/2013**

**Date of Institution : 05.04.2013**

**Date of Decision : 22.01.2014**

Smt. Soma Devi w/o Shri Ram Singh, r/o VPO Guin, Tehsil Sarkaghat, Distt. Mandi, H.P.

*..Petitioner.*

*Versus*

The Executive Engineer, HPPWD Division Dharampur, H.P.

*..Respondent.*Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. Raj Kumar Sharma, Adv.

For the Respondent : Sh. Bhuvnesh Awasthi, Dy.D.A.

**AWARD**

The below given reference has been received from the appropriate Government for adjudication:

“Whether termination of the services of Smt. Soma Devi W/O Sh. Ram Singh, VPO Giun, Tehsil Sarkaghat, Distt. Mandi by the Executive Engineer, HPPWD Division Dharampur, H.P. during the years, 1999 and 2002 without complying the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above aggrieved workman is entitled to from the above employer?”

2. The case of the petitioner (as set out in the statement of claim/demand) is that her services were engaged as a daily rated beldar by the respondent on 1st July, 1998. She continuously worked as such up-to 30.9.1999 as well as completed 240 days of work in a block of 12 calendar months prior to the date of her termination. On 30th September, 1999, her services were terminated by the respondent. Before the disengagement of her services, the procedure prescribed by law was not adopted by the respondent. The persons junior to her namely S/Shri Raju Ram and Prem Singh etc. were retained in service by the respondent. The latter failed to abide by the principle of ‘last come first go’. The services of the persons junior to her have already been regularized by the respondent/department. Not only this, 319 other workmen junior to her have been re-engaged by the respondent as per the orders of this Court by ignoring her claim/seniority. Against the retrenchment order, she (petitioner) had preferred Original Application (M) No. 385/1999 before the erstwhile Hon’ble Himachal Pradesh Administrative Tribunal. Such Original Application was allowed by the Hon’ble Administrative Tribunal. The respondent was directed to re-employ her in the same capacity and at the same place where she was working prior to her termination. Against the order/judgment of the Hon’ble Administrative Tribunal, the respondent filed CWP No. 1310 of 2001 before the Hon’ble High Court of Himachal Pradesh. The directions issued by the Hon’ble Administrative Tribunal were not implemented by the respondent due to the filing of the CWP before the Hon’ble High Court of Himachal Pradesh. It was held by the Hon’ble High Court that the Administrative Tribunal had no jurisdiction to deal with the matter. A demand notice was served upon the respondent by her. Conciliation proceedings were initiated by the Labour Officer-cum-Conciliation Officer, Mandi, but in vain. The act and conduct of the respondent is illegal and unjustified. It is also violative of the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (14 of 1947, ‘the Act’ for short).

As such, she (petitioner) prays that the termination order dated 30.9.1999 passed by the respondent be upset. The respondent be directed to reinstate her in service with all consequential benefits including the seniority, continuity in service and payment of the back wages etc.

3. On notice, the respondent appeared. He filed detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections have been raised to the

effect that the claim petition is not maintainable since other efficacious remedies at the first instance are available to the petitioner. The petition is hit by the vice of delay and laches. The petitioner has not come to the Court with clean hands. She has suppressed the material facts from the Court. The petitioner is estopped from filing the claim petition by her act and conduct.

On merits, it has been owned that the services of the petitioner were engaged as a daily waged beldar on 01.7.1998 and she worked as such up-to 30.9.1999. It has been admitted that the petitioner completed 240 days of work in a block of 12 calendar months preceding the date of her termination. HPPWD Division, Dharampur, was opened in the month of November, 1998. Earlier, the petitioner worked in Sarkaghat Division of the HPPWD. After opening of the new Division, the petitioner was transferred from Sarkaghat Division to Dharampur Division. The services of the petitioner were never terminated as alleged. Actually, on 30.9.1999, the petitioner left the job voluntarily. She never reported for duty thereafter. Daily waged labourers were retrenched during the month of February, 2004 and on 07.7.2005. The services of the petitioner were not disengaged in the years 2004 or 2005 since she had abandoned the job way back in the year 1999. The retrenched workmen have been re-engaged as per the orders passed by this Court, Hon'ble High Court of Himachal Pradesh and the Chief Engineer, HPPWD, Central Zone, Mandi. The services of the workmen have been regularized as per the policy of the State. Since the petitioner left the job willingly, the question of violation of any provision of the Act does not arise.

In these circumstances, the respondent prays that the petition in hand being meritless be dismissed with costs.

4. No rejoinder has been filed by the petitioner.

5. Per order dated 30.7.2013, following issues were struck:—

1. Whether the termination of the services of the petitioner by the respondent in the year 1999 is illegal and unjustified as alleged? ..*OPP*.
2. Whether the claim petition is not maintainable in the present form? ..*OPR*.
3. Whether the petitioner has not approached the Court with clean hands as alleged. If so, its effect? ..*OPR*.
4. Whether the claim petition suffers from the vice of delay and laches as alleged. If so, its effect? ..*OPR*.
5. Whether the petitioner has suppressed the true and material facts from the Court as alleged. If so, its effect? ..*OPR*.
6. Whether the petitioner is estopped from filing the claim petition by her act and conduct as alleged. If so, its effect? ..*OPR*.
7. Relief.

6. At this stage, I will like to highlight that on 30.7.2013 itself the below given order was also passed by this Court:—

“Neither any rejoinder filed nor intended to be filed. Ld. A.R. and csl. for the petitioner state at bar that their client in fact served with the respondent/department upto 30-09-1999 only and they do not press the alleged termination of the services of the petitioner by the



respondent/department in the year 2002. The reply submitted by the respondent also indicates that as per record, the petitioner served only upto 30th Sept., 1999”.

7. I have heard the ld. counsel/AR for the parties and have gone through the case file.

8. For the reasons detailed here under, my findings on the above issues are as follows:—

Issue No. 1 : Yes

Issue No. 2 : Not pressed

Issue No. 3 : Not pressed

Issue No. 4 : No

Issue No. 5 : Not pressed

Issue No. 6 : Not pressed

Relief. : Claim petition allowed in part vide operative portion of the Award.

### REASONS FOR FINDINGS

#### ISSUE NO. 1

9. The petitioner Smt. Soma Devi stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18 Rule 4 CPC, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that on 30.9.1999, she left the job of her own. She also denied that no person junior to her was retained in service by the respondent and she has instituted a phoney petition.

10. Conversely, Sh. Anil Sangrai, Executive Engineer, HPPWD, Division Dharampur (respondent) testified as RW1. He corroborated on oath the contents of the reply filed by him.

In his cross-examination, he admitted that all the workmen whose names have been disclosed in paras 3 and 4 of the proof affidavit Ex. PW1/A are junior to the petitioner. They are still working under him and their services have been regularized. He denied that the petitioner worked only up-to 30.9.1999 and the mandays chart produced by him has been falsely prepared. No notice regarding absence from duty was ever given to the petitioner.

11. Ex. PW1/B is the seniority list/year-wise mandays chart in respect of Shri Shashi Kant s/o Shri Bihari Lal, a daily wager, working under the respondent. It depicts that Shri Shashi Kant was employed in the month of January, 2000 i.e. after the disengagement of the services of the petitioner.

12. Ex. PW1/C is the copy of the judgment dated December 22, 2009 rendered by the Hon'ble High Court of Himachal Pradesh in CWP No.1310 of 2001 titled as State of Himachal Pradesh versus Smt. Savitri Devi and three others. It unfolds that the order dated 07.3.2001 passed by the Hon'ble Administrative Tribunal was set aside by the Hon'ble High Court on the ground that

the Hon'ble Tribunal had no jurisdiction to deal with the matter. The petitioner/workman was given the liberty to initiate appropriate action/proceedings under the Act.

13. Ex. RW1/A is the mandays chart relating to the petitioner.

14. It is the admitted case of the parties that the services of the petitioner were engaged as a daily rated beldar on 1st July, 1998 and she worked as such up-to 30.9.1999. The assertion/statement of the respondent (RW1) to the effect that the petitioner even served the department after 30.9.1999 being beyond the pleadings cannot be read.

15. The version of the petitioner is that on 30.9.1999, her services were wrongly and illegally terminated by the respondent. While denying the said fact, the respondent has pleaded that the petitioner abandoned the job of her own accord and free volition.

16. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondent calling upon her to resume the duties after she allegedly left the same. Absence from duty is serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for her alleged willful absence from duty. The plea of abandonment put forth by the respondent is not established.

17. The mandays chart Ex. RW1/A unfolds that in the year 1999 i.e. up-to 30.9.1999, the petitioner had served the respondent/department for 239 days. However, in the reply, the respondent/employer has admitted that the petitioner had completed 240 days of work in a block of 12 calendar months preceding the date of her termination.

18. Section 25-F of the Act postulates as under:—

“25-F. **Conditions precedent to retrenchment of workmen.**—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until—

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

19. There is nothing on the record to show that before the disengagement of the services of the petitioner, the provisions of the above quoted Section were complied with by the respondent. The respondent was duty bound to abide by the mandatory provisions of Section 25-F of the Act in view of the admissions made by him.

20. As already mentioned, Ex. PW1/B is the mandays chart pertaining to Shri Shashi Kant. Its perusal discloses that his services were initially engaged by the respondent in the month of

January, 2000 i.e. after the termination of the services of the petitioner. There is not even an iota of evidence on the file to prove that before employing Shri Shashi Kant, an opportunity of re-employment as envisaged under Section 25-H of the Act was afforded to the petitioner by the respondent.

21. Not only this, Shri Anil Sangrai (RW1) in his cross-examination admitted that the persons junior to the petitioner are still working under him. The services of the juniors have also been regularized. This indicates that the respondent failed to abide by the principle of 'last come first go'. His action contravenes the provisions of Section 25-G of the Act.

22. Even if, the mandays chart Ex. RW1/A is presumed to be correct, the petitioner cannot be non suited as for deriving the benefit under Sections 25-G and 25-H of the Act, a workman need not complete 240 days of work in a block of 12 calendar months anterior to the date/month of her termination.

23. Such being the situation, I have no hesitation to conclude that the termination of the services of the petitioner by the respondent on 30.9.1999 is illegal and unjustified.

24. This issue is decided in favour of the petitioner and against the respondent.

#### **ISSUES NO. 2, 3, 5 AND 6**

25. Not pressed.

#### **ISSUE NO. 4**

26. Reference No. 41/2001 (RBT No.403/04) titled as Sh. Hari Singh vs. The Secretary, Irrigation & Public Health, Government of H.P., Shimla and two others was disposed of by this Court/Tribunal per Award dated 13.6.2006 by one of my Id. Predecessors. Issue No.4 was framed to the effect as to "Whether the reference is barred by time?" Such issue was decided against the claimant/petitioner Shri Hari Singh. It was held that since the claim petition has been preferred by the petitioner at a belated stage, the industrial dispute raised by him has become stale because of which the reference is not maintainable. Consequently, the claim petition was dismissed and the reference was answered against the workman/petitioner. Aggrieved by and dissatisfied with the Award dated 13.6.2006 rendered by this Court, the petitioner Shri Hari Singh preferred CWP No.4050 of 2009-H before the Hon'ble High Court of Himachal Pradesh, Shimla. Such CWP was allowed by the Hon'ble High Court vide judgment dated 09.10.2012. While setting aside the Award dated 13.6.2006 passed by this Court/Tribunal, it was observed by the Hon'ble High Court that "the reference had to be answered by the Labour Court and the question of the reference having been made belatedly could have been considered at the time of giving the relief". Similar view has been expressed by a Division Bench of our Hon'ble High Court in H.P. State Forest Corporation versus Presiding Judge, Labour Court, Shimla and another, 2012 (133) FLR 684. Taking into account the observations made in these rulings, it cannot be said that the petition is hit by the vice of delay and laches.

27. In Assistant Engineer, Rajasthan State Agriculture Marketing Board, Sub-Division, Kota versus Mohan Lal, Civil Appeal No. 6795 of 2013, decided on 16th August, 2013, by the Hon'ble Supreme Court of India, the issue regarding delay in raising the industrial dispute by the workman was discussed. Paras 19 and 20 of the judgment read thus:—

"19. In a subsequent decision in Balbir Singh, this Court observed that Ajaib Singh was confined to the facts and circumstances of that case. It is true that in Balbir Singh, the plea

of delay was raised before the Industrial Tribunal but we would emphasize the passage from Balbir Singh where it was said: “Whether relief to the workman should be denied on the ground of delay or it should be appropriately moulded is at the discretion of the Tribunal depending on the facts and circumstances of the case. No doubt the discretion is to be exercised judicially.

20. We are clearly of the view that though Limitation Act, 1963 is not applicable to the reference made under the I.D. Act but delay in raising industrial dispute is definitely an important circumstance which the Labour Court must keep in view at the time of exercise of discretion irrespective of whether or not such objection has been raised by the other side. The legal position laid down by this Court in Gitam Singh that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute, must be invariably followed.”

28. In Mohan Lal’s case (cited supra), the workman/petitioner worked as a work-charged employee for 286 days. The industrial dispute was raised by him after six years of the termination. The Hon’ble Apex Court opined that the interest of justice will be sub-served if in lieu of reinstatement, the compensation of Rs.1,00,000/- (one lac) is paid to the workman by the employer.

29. Now comes the all important question as to what relief should be awarded/granted to the petitioner?

30. At the cost of reiteration, I will like to add that the petitioner served the respondent in the years 1998 and 1999 only (as per pleadings of the parties). In accordance with the mandays chart, she worked with the respondent/department only in the year 1999. The retrenchment of her services has been held to be bad in the eyes of law in view of the provisions contained in Sections 25-F, 25-G and 25-H of the Act.

31. Against the termination order dated 30.9.1999, the claimant/petitioner had preferred O.A. (M) No.385/1999 before the Hon’ble Administrative Tribunal. Such Original Application was disposed of by the Hon’ble Administrative Tribunal per order/judgment delivered on 07.3.2001. The Original Application was allowed by the Hon’ble Tribunal. Against the judgment/order dated March 7, 2001 of the Hon’ble Administrative Tribunal, the respondent/State of Himachal Pradesh preferred CWP No.1310 of 2001 before the Hon’ble High Court of Himachal Pradesh. The said CWP was decided by the Hon’ble High Court vide judgment dated 22.12.2009, the copy of which is Ex. PW1/C. While allowing the CWP, it was held by the Hon’ble High Court that the Hon’ble Administrative Tribunal had no jurisdiction to entertain the Original Application. The order of the Hon’ble Administrative Tribunal was set aside. The Hon’ble High Court opined:

“Keeping in view the fact that the respondents as workman employed in a lowly position and the legal position was not clear at the time when the Original Application was filed and disposed of by the Tribunal, we direct that the petitioner, if so advised, may take appropriate action/proceedings under the Industrial Disputes Act. In case, they do so within three months from today, the same shall not be defeated on the ground of the delay or limitation since they were prosecuting the proceeding before the Tribunal and this Court”.

32. The petitioner has placed on the record, the copy of the demand notice dated 03.11.2009 served upon the respondent by her under Section 2-A of the Act. The demand notice was in-fact given by the petitioner before the disposal of the CWP by the Hon’ble High Court.

33. The termination in question took place on 30.9.1999. The same was challenged by the petitioner in the year 1999 itself by instituting Original Application No.385/1999. This shows that the claimant/petitioner raised the dispute immediately after the retrenchment of her services. Her claim is not liable to be defeated in view of the judgment dated 22.12.2009 (Ex. PW1/C) pronounced by the Hon'ble High Court of Himachal Pradesh. Otherwise too, in the reply, the respondent has admitted that the persons junior to the petitioner have already been re-engaged in obedience to the orders passed by the Hon'ble High Court of Himachal Pradesh and this Court/Tribunal.

34. While testifying in the Court as PW1, the petitioner has given her age as 47 years. It is well known that a lady like the petitioner will not sit at home during the period she is/was out of the service. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. In the statement of claim/demand, the petitioner has not whispered a single word to the effect that she is/was not gainfully employed. She is thus not entitled to the back wages.

35. Taking into consideration the trite laid down in Mohan Lal's case (cited supra) and all other relevant factors (narrated above), I feel that the petitioner is entitled to the reinstatement of her services. She is also entitled to the seniority and continuity in service.

36. This issue too is decided in favour of the petitioner and against the respondent.

#### **RELIEF (ISSUE NO. 7)**

37. As a sequel to my findings on the issues No.1 and 4, the instant claim petition succeeds in part and the same is partly allowed. The retrenchment of the petitioner is set aside and quashed. The respondent is directed to re-engage the petitioner forthwith. She shall be entitled to the seniority and continuity in service from the date of her termination i.e. 30.9.1999 except back wages. The respondent is also directed to consider the case of the petitioner for regularization of her services as per the policies framed by the State Government from time to time. It is made clear that if the services of any person junior to the petitioner have already been regularized, she (petitioner) shall be entitled to the regularization from the date/month of the regularization of the services of her junior(s). Parties to bear their own costs.

38. Before parting with this matter, I will like to add that the statement made by the respondent (RW1) and the evidence adduced by him are in-fact beyond the pleadings and contrary to the reply. In the reply, the respondent admitted that the services of the petitioner were engaged on 01.7.1998. In the mandays chart Ex. RW1/A, the date of joining of the petitioner is recorded as 01.1.1999. Further, in the reply, the respondent pleaded that the petitioner left the job on 30.9.1999 and, thereafter, never reported for duty. Strangely, in the mandays chart Ex. RW1/A, it has been mentioned that the petitioner served the respondent/department in the year 2001 as well. This amply demonstrates that either the record is not being properly maintained in the office or some mischief is being committed by fudging the record. Such mischief can be like preparing false muster rolls of the workmen showing that they worked in a particular year (in which they never worked) and were paid the wages. The matter being serious, this Court sincerely hopes and trusts that the respondent will take corrective steps at his end.

39. The reference is answered in the aforesaid terms.

40. A copy of this Award be sent to the appropriate Government for publication in the official gazette.

41. File after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of January, 2014.

(RAJAN GUPTA)  
*Presiding Judge,*  
*Labour Court-cum-Industrial*  
*Tribunal, Dharamshala, H.P.*

## HIGH COURT OF HIMACHAL PRADESH, SHIMLA-171 001

### CORRIGENDUM

*Shimla, the 7<sup>th</sup> March, 2014*

**No. HHC.1(5-Computer/LSQ/Etc.)1997-VI.**—The word “constitution” appearing in second line of the first para of the Gazetted Notification No. HHC/e-Courts Project Meetings/2008-I, dated 03-03-2014, published in the “Rajpatra” Himachal Pradesh, dated 04-03-2014 shall stand replaced by the word “**re-constitute**” and also the Notification Reference No. *i.e.*, “HHC/e-Courts Project Meetings/2008-I, dated 3rd March, 2014” of the above referred Notification shall stand substituted as “**HHC.1(5-Computer/LSQ/Etc.)1997-VI, dated 4th March, 2014**”.

By order,  
 Sd/-  
*Registrar General.*

## HIGHER EDUCATION DEPARTMENT

### NOTIFICATION

*Shimla-2, the 14th March, 2014*

**No. EDN-A-Kha(1)-2/2013.**—On the proposal of Director of Higher Education and in consultation with the Finance Department, the Governor, Himachal Pradesh is pleased to order to frame the following norms for the next three years *i.e.* academic session 2014-15 to 2016-17 for the Government Degree Colleges for assessment of requirement of post of Assistant Professor (College Cadre) as well as work distribution of teaching personnel and other extra curricular activities of the Government Colleges:—

- (1) All the teachers will take 26 periods of one hour each in a week or 26 hours. The remaining periods of the day will be utilized for the work relating to checking of assignments/tests/terms papers as per requirement of CBCS/CCA system, general activities such as:—sports & other extra curricular activities or duties as assigned by the Principal of the concerned college.
- (a) The number of theory periods for general subjects (without practical) *viz.* Major, Minor, Compulsory and General Interest/Hobby per week shall be as under:—

Major	= 4 hours × 2 = 8 hours/week
Minor	= 4 hours × 1 = 4 hours/week
Compulsory	= 3 hours × 1 = 3 hours/week
General interest hobby	= 1 hours × 1 = 1 hours/week
Total	<u>= 16 hours</u>

(b) Practical Subjects

Group size for practical subject will be 30 students. Accordingly the number of section for students will be as under:—

Up to 30	= 1
Up to 60	= 2
Up to 90	= 3
Up to 120	= 4
and so on	

Major (Theory) (Pract)	= 3 × 2 hours	= 6 hours/week
Major (Lab)	= 2 hour × 2 × 2 (groups)	= 8 hours/week
Minor (Theory)	= 3 hours × 1	= 3 hours/week
Minor (Lab)	= 2 hour × 1 × 2 (groups)	= 4 hours/week
Compulsory	= 3 hours x 1	= 3 hours/week
General Interest/Hobby	= 1 hour × 1	= 1 hour/week
<b>Total</b>		<b>= 25 hours/week</b>

(c) Commerce

Major	= 4 hours x 2	= 8 hours/week
Minor	= 4 hours x 2	= 8 hours/week
Compulsory	= 3 hours x 1	= 3 hours/week
General interest/hobby	= 1 hour x 1	= 1 hours/week
<b>Total</b>		<b>= 20 hours/week</b>

(d) Languages i.e. English & Hindi

Major	= 4 hours x 2	= 8 hours/week
Minor	= 4 hours x 1	= 4 hours/week
Compulsory-I	= 3 hours x 3	= 9 hours/week
Compulsory-II	= 3 hours x 3	= 9 hours/week
General interest/hobby	= 1 hour x 3	= 3 hours/week
<b>Total</b>		<b>= 33 hours/week</b>

(e) Post Graduation

There will be 36/48 period per week as per the subject.

The requirement of staff for an institution will be assessed as under :—

Up to 21 periods	= 1
22 to 42 periods	= 2
43 to 63 periods	= 3
64 to 84 periods	= 4
85 to 105 period	= 5 and so on

Further the Principal shall also ensure that all the teachers and other staff should remain present at least seven hours daily or 42 hours in a week in the College/Institution regularly.

- (2) The theory classes of Music Instrumental and Vocal will be clubbed while calculating the work load of Music Department. Group size for practical will be upto 10 students. However last group may be upto 15 students.
- (3) The class size of Major subjects in theory (Arts, Science, Commerce subjects) will be assumed to be of 60 students. However, the 1st section of the students of major

subject will be counted till 80 students and 2<sup>nd</sup> section will be prepared after 81 students.

- (4) For minor subject the old norms will be continued *i.e.* the class size be assumed upto 80 students. However, 1st section till 100 students and 2nd section thereafter from 101 to 180 and thereon. Group size for practical will be upto 30 students. However last group may be upto 35 students.
- (5) In small Colleges, the work load as well as section will be prepared in a combined manner *i.e.* major and minor will be clubbed.
- (6) The Principal of the concerned college shall ensure the 90 teaching days in a semester and 180 teaching days in a academic year. The period of CCE alongwith holding of mid-terms exam and taking assignments work etc. cannot be counted with these teaching days. However, the Director of Higher Education, in consultation with Himachal Pradesh University may designate the schedule of a minimum of 90 teaching days in a semester and 180 teaching days in a academic year keeping in view the duration of holidays, vacation, duration of exam and house tests extra.
- (7) The Director of Higher Education will explore the possibility in consultation with the HP University that either English or Hindi will be taught at least in two semester as compulsory subjects for all the students in addition to the present UG programmes from the next session.
- (8) No teacher will be engaged on PTA/Stop gap/period basis or any other nomenclature by the Principal without the prior permission of the Director of Higher Education. The matter of permission on period basis can only be considered by the Director of Higher Education against sanctioned post. No fund will be provided by the Govt. in this regard. The Principal will generate local funds for this purpose in PTA. If, it is found that any Principal has engaged any incumbent on PTA/Stop gap/period basis or any other nomenclature without the prior permission of the Director of Higher Education the salary of the said incumbent will be paid from the salary of said Principal.

By order,

Sd/-

*Principal Secretary (Education).*